# LAWS AND RESOLUTIONS
# OF THE STATE OF MONTANA
## Volume I of III

## Enacted or Adopted by the

## SIXTY-EIGHTH LEGISLATURE
## IN REGULAR SESSION

## Held at Helena, the Seat of Government
## January 2, 2023, through May 2, 2023

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**OFFICERS AND MEMBERS**
**OF THE MONTANA SENATE**

**2023**

50 Members

34 Republicans 16 Democrats

OFFICERS

President ..... Jason Ellsworth
President Pro Tempore ..... Kenneth Bogner
Majority Leader ..... Steve Fitzpatrick
Majority Whips ..... Steve Hinebauch, Dennis Lenz, Tom McGillvray, Barry Usher
Minority Leader ..... Pat Flowers
Minority Whips ..... Shannon O'Brien, Susan Webber
Secretary of the Senate ..... Marilyn Miller
Sergeant at Arms ..... Gordon Vance

MEMBERS

| Name | Party | District | Preferred Mailing Address |
|---|---|---|---|
| Bartel, Dan | R | 15 | PO Box 1181, Lewistown MT 59457-1181 |
| Beard, Becky | R | 40 | PO Box 85, Elliston MT 59728-0085 |
| Bogner, Kenneth | R | 19 | 1017 Pleasant St, Miles City MT 59301-3414 |
| Boldman, Ellie | D | 45 | 1125 Helen Ave, Missoula MT 59801-4423 |
| Brown, Bob | R | 7 | 309 Little Beaver Creek Rd, Trout Creek MT 59874-9604 |
| Cuffe, Mike | R | 1 | PO Box 1685, Eureka MT 59917-1685 |
| Curdy, Willis | D | 49 | 11280 Kona Ranch Rd, Missoula MT 59804-9790 |
| Dunwell, Mary Ann | D | 42 | 2811 Alexis Ave, Helena MT 59601-8655 |
| Ellis, Janet | D | 41 | PO Box 385, Helena MT 59624-0385 |
| Ellsworth, Jason | R | 43 | 1073 Golf Course Rd, Hamilton MT 59840-9230 |
| Emrich, Daniel | R | 11 | 2112 6th Ave N, Great Falls MT 59401-1802 |
| Esp, John | R | 30 | PO Box 1024, Big Timber MT 59011-1024 |
| Fitzpatrick, Steve | R | 10 | 3203 15th Ave S, Great Falls MT 59405-5416 |
| Flowers, Pat | D | 32 | 11832 Gee Norman Rd, Belgrade MT 59714-8416 |
| Fox, Mike | D | 16 | PO Box 442, Hays MT 59527-0442 |
| Friedel, Chris | R | 26 | 3302 2nd Ave N, Billings MT 59101-2005 |
| Fuller, John | R | 4 | PO Box 7002, Kalispell MT 59904-7002 |
| Gillespie, Bruce | R | 9 | PO Box 275, Ethridge MT 59435-0275 |
| Glimm, Carl | R | 2 | 5107 Ashley Lake Rd, Kila MT 59920-9787 |
| Gross, Jen | D | 25 | Billings MT 59105-4454 |
| Hayman, Denise | D | 33 | PO Box 6115, Bozeman MT 59771-6115 |
| Hertz, Greg | R | 6 | PO Box 1747, Polson MT 59860-1747 |
| Hinebauch, Steve | R | 18 | 610 Rd 118, Wibaux MT 59353-9058 |
| Kelker, Kathy | D | 24 | 2438 Rimrock Rd, Billings MT 59102-0556 |
| Lang, Mike | R | 17 | PO Box 104, Malta MT 59538-0104 |
| Lenz, Dennis | R | 27 | PO Box 20752, Billings MT 59104-0752 |
| Lynch, Ryan | D | 37 | PO Box 934, Butte MT 59703-0934 |
| Mandeville, Forrest | R | 29 | PO Box 337, Columbus MT 59019-0337 |
| Manzella, Theresa | R | 44 | 640 Gold Creek Loop, Hamilton MT 59840-9742 |
| McClafferty, Edie | D | 38 | 1311 Stuart, Butte MT 59701-5014 |
| McGillvray, Tom | R | 23 | Billings MT 59102-1119 |
| McKamey, Wendy | R | 12 | 33 Upper Millegan Rd, Great Falls MT 59405-8427 |
| Molnar, Brad | R | 28 | PO Box 517, Laurel MT 59044-0517 |
| Morigeau, Shane | D | 48 | 10643 Upland Trl, Missoula MT 59804-9203 |

| | | | |
|---|---|---|---|
| Noland, Mark | R | 5 | PO Box 1852, Bigfork MT 59911-1852 |
| O'Brien, Shannon | D | 46 | Missoula MT 59802-3327 |
| Olsen, Andrea | D | 50 | 622 Rollins St, Missoula MT 59801-3719 |
| Pope, Christopher | D | 31 | PO Box 6546, Bozeman MT 59771-6546 |
| Regier, Keith | R | 3 | 1078 Stillwater Rd, Kalispell MT 59901-6902 |
| Sales, Walt | R | 35 | 3900 Stagecoach Trl, Manhattan MT 59741-8223 |
| Salomon, Daniel | R | 47 | 42164 Salomon Rd, Ronan MT 59864-9272 |
| Small, Jason | R | 21 | HC 42 Box 674, Busby MT 59016-9703 |
| Tempel, Russ | R | 14 | PO Box 131, Chester MT 59522-0131 |
| Trebas, Jeremy | R | 13 | PO Box 2364, Great Falls MT 59403-2364 |
| Usher, Barry | R | 20 | 6900 S Frontage Rd, Billings MT 59101-6220 |
| Vance, Shelley | R | 34 | PO Box 1, Belgrade MT 59714-0001 |
| Vermeire, Terry | R | 39 | 1217 W 4th St, Anaconda MT 59711-1807 |
| Webber, Susan | D | 8 | PO Box 1011, Browning MT 59417-1011 |
| Welborn, Jeff | R | 36 | PO Box 790, Dillon MT 59725-0790 |
| Zolnikov, Daniel | R | 22 | PO Box 50403, Billings MT 59105-0403 |

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

**2023**

100 Members

68 Republicans 32 Democrats

OFFICERS

Speaker ..... Matt Regier
Speaker Pro Tempore ..... Rhonda Knudsen
Majority Leader ..... Sue Vinton
Majority Whips ..... Brandon Ler, Terry Moore, Jennifer Carlson, Neil Duram, Steve Gist, Denley Loge
Minority Leader ..... Kim Abbott
Minority Caucus Chair ..... Alice Buckley
Minority Whips ..... Derek Harvey, Tyson Running Wolf, Katie Sullivan
Chief Clerk of the House ..... Carolyn Tschida
Sergeant at Arms ..... Brad Murfitt

MEMBERS

| Name | Party | District | Preferred Mailing Address |
|---|---|---|---|
| Abbott, Kim | D | 83 | 523 E 6th Ave, Helena MT 59601-4369 |
| Anderson, Fred | R | 20 | Great Falls MT 59406-6921 |
| Barker, Brad | R | 58 | Red Lodge MT 59068 |
| Baum, Denise | D | 47 | PO Box 81112, Billings MT 59108-1112 |
| Bedey, David | R | 86 | PO Box 692, Hamilton MT 59840-0692 |
| Bergstrom, James | R | 30 | PO Box 110, Buffalo MT 59418-0110 |
| Bertoglio, Marta | R | 75 | PO Box 294, Clancy MT 59634-0294 |
| Binkley, Michele | R | 85 | PO Box 1601, Hamilton MT 59840-1601 |
| Bishop, Laurie | D | 60 | 211 S Yellowstone St, Livingston MT 59047-3018 |
| Brewster, Larry | R | 44 | Billings MT 59105-2220 |
| Brockman, Tony | R | 9 | PO Box 10016, Kalispell MT 59904-3016 |
| Buckley, Alice | D | 63 | 107 S 10th Ave, Bozeman MT 59715-4318 |
| **Butcher, Ed | R | 29 | PO Box 89, Winifred MT 59489-0089 |
| Buttrey, Ed | R | 21 | Great Falls MT 59401-3731 |
| Caferro, Mary | D | 82 | PO Box 668, Helena MT 59624-0668 |
| Carlson, Jennifer | R | 69 | Manhattan MT 59741-8488 |
| Carter, Bob | D | 98 | 4299 Spurgin Rd, Missoula MT 59804-4521 |
| Cohenour, Jill | D | 84 | 2610 Colt Dr, East Helena MT 59635-3442 |
| Deming, Lee | R | 55 | Laurel MT 59044-9718 |
| Dooling, Julie | R | 70 | PO Box 398, Townsend MT 59644-0398 |
| Duram, Neil | R | 2 | PO Box 1226, Eureka MT 59917-1226 |
| Essmann, Sherry | R | 52 | PO Box 80945, Billings MT 59108-0945 |
| Etchart, Jodee | R | 48 | PO Box 22014, Billings MT 59104-2014 |
| Falk, Terry | R | 8 | PO Box 9484, Kalispell MT 59904-2484 |
| Fern, Dave | D | 5 | 211 Dakota Ave, Whitefish MT 59937-2205 |
| Fielder, Paul | R | 13 | PO Box 2558, Thompson Falls MT 59873-2558 |
| Fitzgerald, Ross | R | 17 | PO Box 207, Power MT 59468-0207 |
| Fitzpatrick, John | R | 77 | PO Box 994, Anaconda MT 59711-0994 |
| *Flament, Douglas | R | 29 | PO Box 1082, Lewistown MT 59457-1082 |
| France, Tom | D | 94 | 5900 Thornbird Ln, Missoula MT 59808-9010 |
| Frazer, Gregory | R | 78 | Deer Lodge MT 59722-1018 |
| Galloway, Steven | R | 24 | Great Falls MT 59404-6235 |
| Gillette, Jane | R | 64 | PO Box 1751, Bozeman MT 59771-1751 |
| Gist, Steve | R | 25 | Cascade MT 59421-8369 |
| Green, Paul | R | 41 | Hardin MT 59034-1315 |
| Gunderson, Steve | R | 1 | Libby MT 59923-8965 |
| Hamilton, Jim | D | 61 | PO Box 1768, Bozeman MT 59771-1768 |
| Harvey, Derek | D | 74 | PO Box 3111, Butte MT 59701-3111 |
| ****Hastings, Naarah | R | 50 | Billings MT 59102 |
| Hawk, Donavon | D | 76 | PO Box 3791, Butte MT 59702-3791 |

| | | | |
|---|---|---|---|
| Hellegaard, Lyn | R | 97 | Missoula MT 59801-8910 |
| Hinkle, Caleb | R | 68 | PO Box 468, Belgrade MT 59714-0468 |
| Hinkle, Jedediah | R | 67 | Belgrade MT 59714-3564 |
| Hopkins, Mike | R | 92 | PO Box 848, Missoula MT 59806-0848 |
| Howell, SJ | D | 95 | PO Box 8623, Missoula MT 59807-8623 |
| Jones, Llew | R | 18 | Conrad MT 59425-1919 |
| Karlen, Jonathan | D | 96 | PO Box 2960, Missoula MT 59806-2960 |
| Kassmier, Josh | R | 27 | PO Box 876, Fort Benton MT 59442-0876 |
| Keenan, Bob | R | 10 | PO Box 697, Bigfork MT 59911-0697 |
| Keogh, Connie | D | 91 | PO Box 7542, Missoula MT 59807-7542 |
| Kerns, Scot | R | 23 | Great Falls MT 59401-2273 |
| Kerr-Carpenter, Emma | D | 49 | PO Box 22062, Billings MT 59104-2062 |
| Kmetz, Greg | R | 38 | Miles City MT 59301-5527 |
| Knudsen, Casey | R | 33 | PO Box 18, Malta MT 59538-0018 |
| Knudsen, Rhonda | R | 34 | PO Box 734, Culbertson MT 59218-0734 |
| Kortum, Kelly | D | 65 | PO Box 942, Bozeman MT 59771-0942 |
| Ler, Brandon | R | 35 | Savage MT 59262-9460 |
| Loge, Denley | R | 14 | St. Regis MT 59866-9610 |
| Lynch, Jennifer | D | 73 | 1312 Hobson Ave, Butte MT 59701-3430 |
| Malone, Marty | R | 59 | PO Box 152, Pray MT 59065-0152 |
| Marler, Marilyn | D | 90 | 1750 S 8th St W, Missoula MT 59801-3445 |
| Marshall, Ron | R | 87 | Hamilton MT 59840-3016 |
| Matthews, Eric | D | 66 | Bozeman MT 59715-4448 |
| Mercer, Bill | R | 46 | PO Box 2118, Billings MT 59103-2118 |
| Miner, Russ | R | 19 | Great Falls MT 59405-8268 |
| Mitchell, Braxton | R | 3 | PO Box 1765, Columbia Falls MT 59912-1765 |
| Moore, Terry | R | 54 | Billings MT 59106-3313 |
| Nave, Fiona | R | 57 | Columbus MT 59019-7357 |
| Nicol, Nelly | R | 53 | PO Box 20692, Billings MT 59104-0692 |
| Nikolakakos, George | R | 26 | Great Falls MT 59405-1338 |
| Oblander, Greg | R | 40 | Billings MT 59102-6546 |
| Parry, Gary | R | 39 | PO Box 455, Colstrip MT 59323-0455 |
| Phalen, Bob | R | 36 | Lindsay MT 59339-9505 |
| Read, Joe | R | 93 | Ronan MT 59864-2435 |
| Regier, Amy | R | 6 | PO Box 10466, Kalispell MT 59904-3466 |
| Regier, Matt | R | 4 | Kalispell MT 59904-2763 |
| Reksten, Linda | R | 12 | Polson MT 59860-6960 |
| Romano, Melissa | D | 81 | PO Box 6393, Helena MT 59604-6393 |
| Running Wolf, Tyson | D | 16 | PO Box 377, Browning MT 59417-0377 |
| Rusk, Wayne | R | 88 | PO Box 531, Corvallis MT 59828-0531 |
| Schillinger, Jerry | R | 37 | PO Box 147, Circle MT 59215-0147 |
| Seekins-Crowe, Kerri | R | 43 | Billings MT 59105-2742 |
| Sheldon-Galloway, Lola | R | 22 | Great Falls MT 59404-6235 |
| Smith, Frank | D | 31 | PO Box 729, Poplar MT 59255-0249 |
| Smith, Laura | D | 79 | PO Box 1402, Helena MT 59624-1402 |
| Smith, Tanner | R | 11 | PO Box 921, Lakeside MT 59922-0921 |
| Sprunger, Courtenay | R | 7 | PO Box 8315, Kalispell MT 59904-8315 |
| Stafman, Ed | D | 62 | PO Box 305, Bozeman MT 59771-0305 |
| Stewart Peregoy, Sharon | D | 42 | PO Box 211, Crow Agency MT 59022-0211 |
| ***Stromswold, Mallerie | R | 50 | Billings MT 59106-1332 |
| Sullivan, Katie | D | 89 | PO Box 7853, Missoula MT 59807-7853 |
| Thane, Mark | D | 99 | PO Box 692, Missoula MT 59806-0692 |
| Tuss, Paul | D | 28 | 13 Spruce Dr, Havre MT 59501-5439 |
| Vinton, Sue | R | 56 | PO Box 236, Billings MT 59103-0236 |
| Walsh, Ken | R | 71 | PO Box 483, Twin Bridges MT 59754-0483 |
| Weatherwax Jr, Marvin | D | 15 | PO Box 2828, Browning MT 59417-2828 |
| Welch, Tom | R | 72 | Dillon MT 59725-2977 |
| Windy Boy, Jonathan | D | 32 | PO Box 250, Box Elder MT 59521-0250 |
| Wirth, Zack | R | 80 | Wolf Creek MT 59648-8747 |
| Yakawich, Mike | R | 51 | PO Box 32004, Billings MT 59107-2004 |
| Zephyr, Zooey | D | 100 | PO Box 5213, Missoula MT 59806-5213 |
| Zolnikov, Katie | R | 45 | PO Box 51343, Billings MT 59105-1343 |

*Resigned January 10, 2023
**Appointed to fill vacated HD 29 seat
***Resigned January 14, 2023
****Appointed to fill vacated HD 50 seat

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## HOUSE AND SENATE BILLS

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## HOUSE RESOLUTIONS ADOPTED

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## 2022 BALLOT ISSUES APPROVED

# LAWS

## Enacted by the

# SIXTY-EIGHTH LEGISLATURE
# IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 2, 2023, through May 2, 2023**

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

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**COMPILED BY MONTANA**
**LEGISLATIVE SERVICES DIVISION**

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# CHAPTER NO. 1

[HB 1]

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

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

**Section 1. Appropriation.** (1) The following amounts are appropriated from the state general fund for fiscal years 2023, 2024, and 2025 for the operation of the 68th legislature and the costs of preparing for the 69th legislature:

| | |
|---|---|
| LEGISLATIVE BRANCH (1104) | |
| Senate | $5,127,450 |
| House of Representatives | $8,552,618 |
| Legislative Services Division | $1,928,242 |

(2) The following amounts are appropriated from the state general fund for fiscal year 2025 for the initial costs of the 69th legislature:

| | |
|---|---|
| LEGISLATIVE BRANCH (1104) | |
| Senate | $295,965 |
| House | $543,846 |
| Legislative Services Division | $16,500 |

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

Approved January 30, 2023

# CHAPTER NO. 2

[SB 18]

AN ACT ADDING A BENEFIT POLICY STATEMENT TO EACH PENSION SYSTEM PREVENTING THE ADDITION OF NEW BENEFITS UNLESS CERTAIN CRITERIA ARE MET.

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

**Section 1. Public employees' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the public employees' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 2. Judges' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the judges' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 3. Highway patrol officers' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the highway patrol officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 4. Sheriffs' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the sheriffs' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 5. Game wardens' and peace officers' retirement system benefit policy statement.** It is the policy of the state that additional benefits

may not be added to the game wardens' and peace officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 6. Municipal police officers' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the municipal police officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 7. Firefighters' unified retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the firefighters' unified retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 8. Volunteer Firefighters' Compensation Act benefit policy statement.** It is the policy of the state that additional benefits may not be added to the Volunteer Firefighters' Compensation Act unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 9. Teachers' retirement system benefit policy statement.** It is the policy of the state that additional benefits may not be added to the teachers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

**Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 1, and the provisions of Title 19, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 5, part 1, and the provisions of Title 19, chapter 5, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 6, part 1, and the provisions of Title 19, chapter 6, part 1, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 19, chapter 7, part 1, and the provisions of Title 19, chapter 7, part 1, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 19, chapter 8, part 1, and the provisions of Title 19, chapter 8, part 1, apply to [section 5].

(6) [Section 6] is intended to be codified as an integral part of Title 19, chapter 9, part 1, and the provisions of Title 19, chapter 9, part 1, apply to [section 6].

(7) [Section 7] is intended to be codified as an integral part of Title 19, chapter 13, part 1, and the provisions of Title 19, chapter 13, part 1, apply to [section 7].

(8) [Section 8] is intended to be codified as an integral part of Title 19, chapter 17, part 1, and the provisions of Title 19, chapter 17, part 1, apply to [section 8].

(9) [Section 9] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the provisions of Title 19, chapter 20, part 1, apply to [section 9].

Approved February 13, 2023

# CHAPTER NO. 3

[HB 44]

AN ACT REVISING DOCUMENT REQUIREMENTS FOR STATE STOCK INSPECTORS AND DEPUTY STOCK INSPECTORS; REMOVING THE REQUIREMENT THAT CERTIFICATES OF INSPECTION, MARKET CONSIGNMENT PERMITS, AND TRANSPORTATION PERMITS BE MADE IN TRIPLICATE; AMENDING SECTION 81-3-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 81-3-203, MCA, is amended to read:

"**81-3-203. Duties of state stock inspectors and deputy stock inspectors.** (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the authorized agent of the owner of livestock, shall inspect livestock that are intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock.

(2) The inspection must include an examination of the livestock and all marks and brands on the livestock to identify ownership of the livestock. The certificate of inspection ~~must be made in triplicate and~~ must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, on the animal, and any other information on the certificate that the department may require. ~~One~~ *A* copy of the certificate must be retained by the inspector, ~~one~~ *a* copy must be furnished by the inspector to the owner or shipper of the livestock, and ~~one~~ *a* copy must be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock, the state stock inspectors or deputy state stock inspectors, upon application of an owner or the owner's agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit ~~must be made in triplicate and~~ must specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different from the owner, the kind of livestock, the marks and brands, if any, on the livestock, a description of the vehicle or vehicles to be used to transport the livestock, including the license number of the vehicles, and any other information on the permit that the department may require. A permit issued is good for shipment within 36 hours from the date and time of issue. However, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. ~~One~~ *A* copy of the permit must be retained by the inspector, ~~one~~ *a* copy must be filed by the inspector with the department

within 5 days of the date of issue, and ~~one~~ *a* copy must be furnished by the inspector to the owner or shipper of the livestock. The owner's or shipper's copy of the permit must accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock are delivered.

(4) Upon application of an owner or the owner's agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to possess the livestock, a state stock inspector shall issue a transportation permit that will allow the movement of the livestock for purposes of grazing. The transportation permit must state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in and subject to 81-3-211(6)(e). A state stock inspector may enter the premises where livestock have been transported and inspect any livestock moved under the transportation permit or any livestock commingled with the transported livestock.

(5) A person transporting strays or livestock not lawfully under that person's control is guilty of a misdemeanor and is punishable as provided in 81-3-231."

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

Approved February 16, 2023

# CHAPTER NO. 4

[HB 30]

AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS; ADOPTING PRUDENTIAL STANDARDS FOR NONBANK MORTGAGE SERVICERS; PROVIDING FOR APPLICABILITY AND EXCLUSIONS; PROVIDING FOR FINANCIAL CONDITIONS AND CORPORATE GOVERNANCE OF SERVICERS; GRANTING AUTHORIZATION TO THE DEPARTMENT OF ADMINISTRATION REGARDING SERVICERS; ALLOWING REMOTE WORK FOR A MORTGAGE BUSINESS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 32-9-103, 32-9-104, 32-9-120, 32-9-122, 32-9-130, 32-9-160, AND 32-9-166, MCA; REPEALING SECTION 32-9-171, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity requirements in [sections 1 through 6], including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade.

(2) "Corporate governance" means the structure of the institution and how it is managed, including the corporate rules, policies, processes, and practices used to oversee and manage the institution.

(3) "Covered institution" means a nonbank servicer:

(a) with servicing portfolios of 2,000 or more 1- to 4-unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned, and loans being interim serviced prior to sale as of the most recent calendar year end, reported in the NMLS mortgage call report; and

(b) that operates in two or more states, districts, or territories of the United States either currently or as of the prior calendar year end.

(4) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(5) "External audit" means the formal report prepared by an independent certified public accountant expressing an opinion on whether the financial statements are presented fairly in all material aspects in accordance with the applicable financial reporting framework, and is inclusive of an evaluation of the adequacy of a company's internal control structure.

(6) "GSE" means government-sponsored enterprises, the federal national mortgage association, or the federal home loan mortgage corporation.

(7) "Interim serviced prior to sale" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.

(8) "Internal audit" means the internal activity of performing independent, objective assurance and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes.

(9) "Licensee" has the same meaning as provided in 32-9-103.

(10) "Mortgage" has the same meaning as provided in 32-9-103.

(11) "Mortgage call report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in NMLS.

(12) "Mortgage servicing rights" means the contractual right to service residential mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.

(13) "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing rights and rely on subservicers to administer the loans on their behalf.

(14) "Mortgage-backed security" means financial instruments, often debt securities, collateralized by residential mortgages.

(15) "Operating liquidity" means the funds necessary to perform normal business operations, such as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

(16) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

(17) "Residential mortgage loans serviced" means the specific portfolio or portfolios of residential mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans for the defined servicing activities.

(18) "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers over 55 years of age, that does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the home or refinance by the heirs.

(19) "Risk management" means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of the servicer.

(20) "Servicer" means the entity performing the routine administration of residential mortgage loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.

(21) "Servicing liquidity" or "liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required

in acquiring and financing mortgage servicing rights, hedging costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities, and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing related advances.

(22) "Subservicer" means the entity performing the routine administration of residential mortgage loans as agent of a servicer or under the terms of a subservicing contract.

(23) "Subservicing for others" means the contractual activities performed by subservicers on behalf of a servicer or mortgage servicing rights investor.

(24) "Unencumbered investment grade assets held for sale or trade" means agency mortgage-backed securities, obligations of GSEs, and U.S. treasury obligations.

(25) "Whole loans" mean those loans for which a mortgage and the underlying credit risk is owned and held on balance sheet of the entity with all ownership rights.

**Section 2. Applicability -- exclusions.** (1) [Sections 1 through 6] are applicable to covered institutions. For entities within a holding company or affiliated group of companies, applicability is at the covered institution level.

(2) The following exclusions apply:

(a) [Sections 1 through 6] do not apply to not-for-profit servicers or housing finance agencies.

(b) [Section 3] does not apply to servicers solely owning or conducting reverse mortgage servicing, or the reverse mortgage portfolio administered by covered institutions or the whole loan portion of portfolios.

(c) A servicer with 25 or fewer loans, a servicer that is wholly owned and controlled by one or more depository institutions regulated by a state or federal banking agency, or a servicer that is also licensed as an escrow business may apply to the department to waive or adjust one or more of the financial condition requirements in [section 3]. In considering such a request, the department will consider whether the servicer has a positive net worth and adequate operating reserves.

**Section 3. Financial condition of servicers.** (1) A covered institution shall maintain capital and liquidity in compliance with this section.

(2) For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.

(3) A covered institution that meets the federal housing finance agency eligibility requirements for enterprise single-family seller/servicers for capital, net worth ratio, and liquidity, regardless of whether the servicer is approved for GSE servicing, meets the requirements of subsections (1) and (2).

(4) Covered institutions shall maintain written policies and procedures implementing the capital and servicing liquidity requirements as set by the department by rule.

(5) Covered institutions shall maintain sufficient allowable assets for liquidity, in addition to the amounts required for servicing liquidity, to cover normal business operations.

(6) Covered institutions shall have in place sound cash management and business operating plans as set by the department by rule.

(7) Covered institutions shall develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the institution. The department shall set further requirements for operating liquidity by rule.

**Section 4. Corporate governance of servicers.** Covered institutions shall establish and maintain corporate governance standards as set by the

department by rule. The standards must include internal and external audits and risk management.

**Section 5. Authority of department regarding servicers.** (1) If risk is determined by a formal review of a specific covered institution to be extremely high, the department may order or direct the institution to satisfy additional conditions necessary to ensure that the institution will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with state and federal law and regulation.

(2) If risk is determined by a formal review of a specific covered institution or institutions to be extremely low, the department may provide notice to the institution or institutions that all or part of [sections 1 through 6] are not applicable to those covered institutions.

(3) Whenever economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension of all or certain sections of [sections 1 through 6], the department may provide public notice by proclamation of a temporary suspension.

**Section 6. Rulemaking.** The department shall adopt rules necessary to carry out the intent and purposes of [sections 1 through 6]. In adopting rules under [sections 1 through 6] the department shall use the final model state regulatory prudential standards for nonbank mortgage servicers in effect at the time of rulemaking as published by the conference of state bank supervisors.

**Section 7. Requirements for remote work.** (1) Mortgage business may be conducted at a remote work location if:

(a) the licensed mortgage entity's employees and independent contractors do not meet with the public at an unlicensed personal residence;

(b) no physical or electronic business records are maintained at the remote location;

(c) the licensed mortgage entity has written policies and procedures for working remotely and the entity supervises and enforces the policies and procedures;

(d) no signage or advertising of the entity or the mortgage loan originator is displayed at any remote work location;

(e) the licensed mortgage entity maintains the computer system and customer information in accordance with the entity's information technology security plan and all state and federal laws;

(f) any device used to engage in mortgage business has appropriate security, encryption, and device management controls to ensure the security and confidentiality of customer information as required by rules and regulations adopted by the department;

(g) the licensed mortgage entity's employees and independent contractors take reasonable precautions to protect confidential information in accordance with state and federal laws;

(h) the NMLS record of a mortgage loan originator that works remotely designates a properly licensed location as the mortgage loan originator's official workstation and a designated manager as a supervisor; and

(i) the licensed mortgage entity annually reviews and certifies that the employees and independent contractors engaged in mortgage business at a remote location meet the requirements of this section. Upon request, a licensee shall provide written documentation of the licensee's review to the department.

(2) If the commissioner determines that the licensee does not provide reasonable and adequate supervision of the employee, the commissioner shall notify the licensee in writing and within 5 business days of receiving the notice the licensee shall terminate the employee's eligibility to work remotely as provided under this section.

(3) The department shall adopt rules to implement this section.

**Section 8.** Section 32-9-103, MCA, is amended to read:

"**32-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(2) "Advertising" means a commercial message in any medium, including social media and software, that promotes, either directly or indirectly, a residential mortgage loan transaction.

(3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a response to a solicitation of an offer of residential mortgage loan terms and includes the information about the borrower that is customary or necessary in a decision on whether to make such an offer.

(4) "Approved education course" means any course approved by the NMLS.

(5) "Approved test provider" means any test provider approved by the NMLS.

(6) "Bona fide not-for-profit entity" means an entity that:

(a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(4);

(b) promotes affordable housing or provides homeownership education or similar services;

(c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) receives funding and revenue and charges fees in a manner that does not create incentives for the entity or its employees to act other than in the best interests of its clients;

(e) compensates employees in a manner that does not create incentives for employees to act other than in the best interests of clients;

(f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(g) is either certified by the U.S. department of housing and urban development or has received a community housing development organization designation as defined in 24 CFR 92.2.

(7) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(9) *(a)* "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business.

*(b)* The location is considered a branch office if:

~~(a)~~*(i)* the address of the location appears on business cards, stationery, or advertising used by the entity;

~~(b)~~*(ii)* the entity's name or advertising suggests that mortgages are made at the location;

~~(c)~~*(iii)* the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

~~(d)~~*(iv)* the location is controlled directly or indirectly by the entity.

*(c) A mortgage loan originator working from a remote location is not a branch office if the requirements of 32-9-122 and [section 7] are fully met.*

(10) (a) "Clerical or support duties" includes:

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(b) The term does not include:

(i) taking a residential mortgage loan application; or

(ii) offering or negotiating the terms of a residential mortgage loan.

(11) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.

*(12) "Confidential supervisory information" means:*

*(a) reports of examination, inspection, and visitation, nonpublic operating, condition, and compliance reports, supervisory letters, or similar documents, and any information contained in, derived from, used to create, or related to the documents;*

*(b) any documents, materials, or records, including reports of examination, prepared by, or on behalf of, or for the use of the department or any state or federal financial services regulatory agency in the exercise of supervisory authority over a supervised entity, and any information derived from or used to prepare the documents, materials, or records;*

*(c) any communications between the department and a supervised entity or a state or federal financial services regulatory agency related to the department's supervision of the entity;*

*(d) any information received or generated by the department pursuant to 32-9-130;*

*(e) confidential criminal justice information, as defined in 44-5-103;*

*(f) personal information protected by an individual privacy interest; and*

*(g) information that is exempt from disclosure pursuant to 12 U.S.C. 5111.*

~~(12)~~*(13)* (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

~~(13)~~*(14)* "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(14)~~*(15)* "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(15)~~*(16)* "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

~~(16)~~*(17)* "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

~~(17)~~*(18)* "Entity" means a business organization, including a sole proprietorship.

~~(18)~~*(19)* "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(19)~~*(20)* "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

~~(20)~~*(21)* "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

~~(21)~~*(22)* "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

~~(22)~~*(23)* "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

~~(23)~~*(24)* "Independent contractor" means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

~~(24)~~*(25)* "Independent contractor entity" means an entity that offers or provides clerical or support duties for another person.

~~(25)~~*(26)* "Individual" means a natural person.

~~(26)~~*(27)* "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(27)~~*(28)* "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(28)~~*(29)* (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties as an employee at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection ~~(28)(a)~~ *(29)(a)*, "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

~~(29)~~*(30)* "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(30)~~*(31)* (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration or holds itself out as being able to assist a person in obtaining a mortgage loan.

(b) For purposes of this subsection ~~(30)~~ *(31)*, attempting to obtain or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(31)~~*(32)* "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, commits to advancing funds for a mortgage loan applicant, or holds itself out as being able to perform any of those functions.

~~(32)~~*(33)* (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term includes an individual who represents to the public that the individual can or will perform the services described in subsection ~~(32)(a)~~ *(33)(a)*.

(c) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

~~(33)~~*(34)* "Mortgage servicer" means an entity that:

*(a) for forward mortgages:*

~~(a)~~*(i)* engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract;

~~(b)~~*(ii)* meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans; or

~~(c)~~*(iii)* holds out to the public that the entity is able to comply with subsection ~~(33)(a)~~ *(34)(a)(i)* or ~~(33)(b)~~ *(34)(a)(ii)*

*(b) for a home equity conversion mortgage or a reverse mortgage, makes or holds out to the public that the entity can make a payment to the borrower.*

~~(34)~~*(35)* "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration and licensing of persons providing nondepository financial services.

~~(35)~~*(36)* "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(36)~~*(37)* "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(37)~~*(38)* "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(37)(a)~~ *(38)(a)* through ~~(37)(d)~~ *(38)(d)*.

~~(38)~~*(39)* "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the NMLS.

~~(39)~~*(40)* "Regularly engage" means that a person:

(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than five residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than five residential mortgage loans in the current calendar year; or

(b) has served as the prospective source of financing or performed other phases of loan originations on more than five residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than five residential mortgage loans in the current calendar year.

~~(40)~~*(41)* "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

~~(41)~~*(42)* "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(42)~~*(43)* "Responsible individual" means a Montana-licensed mortgage loan originator with at least 1 1/2 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an independent contractor entity as the individual responsible for the operation of a particular location that is under the responsible individual's full management, supervision, and control.

~~(43)~~*(44)* (a) "Service provider" means a person who performs activities relating to the business of mortgage origination, lending, or servicing on behalf of a licensee.

(b) Activities relating to the business of mortgage origination, lending, or servicing include:

(i) providing data processing services;

(ii) performing activities in the support of residential mortgage origination, lending, or servicing; and

(iii) providing internet-related services, including web services, processing electronic borrower payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring.

(c) Activities relating to the business of mortgage origination, lending, or servicing do not include providing an interactive computer service or a general

audience internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of mortgage origination, lending, or servicing.

(d) Activities relating to the business of mortgage origination, lending, or servicing performed by a mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending, or servicing are considered mortgage loan originating, lending, or servicing.

~~(44)~~*(45)* "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(45)~~*(46)* "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

**Section 9.** Section 32-9-104, MCA, is amended to read:

"**32-9-104. Exemptions -- proof of exemption.** (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, tribal, or local government;

(b) an individual who is an employee of a federal, state, tribal, local government, or housing finance agency acting as a loan originator only pursuant to the individual's official duties as an employee of the federal, state, tribal, local government, or housing finance agency;

(c) an entity described in 32-9-103~~(38)(a)(i)~~*(39)(a)(i)* through ~~(38)(a)(iii)~~*(39)(a)(iii)*;

(d) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(38)(a)(i)~~*(39)(a)(i)* through ~~(38)(a)(iii)~~*(39)(a)(iii)*;

(e) an individual who performs only administrative or clerical tasks at the direction of and subject to the supervision and instruction of an individual who:

(i) is a licensed and registered mortgage loan originator pursuant to this part; or

(ii) is not required to be licensed in accordance with subsection (1)(b), (1)(d), or (1)(g);

(f) an entity that is a bona fide not-for-profit entity;

(g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower*, or acts as a servicer with respect to work duties for the bona fide not-for-profit entity*;

(h) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage broker, a mortgage lender, or a mortgage loan originator or an agent of the mortgage broker, mortgage lender, or mortgage loan originator;

(i) a person regulated by the commissioner of insurance if that person's principal business is that of preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;

(j) a Montana-licensed attorney performing activities that fall within the definition of a mortgage loan originator if the activities are:

(i) considered by the Montana supreme court to be part of the authorized practice of law within this state;

(ii) carried out within an attorney-client relationship; and

(iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or

(k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the administrative or clerical tasks.

(2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and accompanying documentation by December 31 of each year.

(b) In determining whether an entity is a bona fide not-for-profit entity, the department may rely on its receipt and review of:

(i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities; or

(ii) reports and attestations prescribed by the department.

(3) The burden of proving an exemption under this section is on the person claiming the exemption. (See part compiler's comment regarding contingent suspension.)"

**Section 10.** Section 32-9-120, MCA, is amended to read:

"**32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal.** (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage loan originator license or an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or ~~pled~~ *pleaded* guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon or expungement of a conviction is not a conviction for the purposes of this subsection (1)(b). When determining the eligibility of the applicant for licensure under subsection (1)(c) or this subsection (1)(b), the department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction.

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not provided and maintained the surety bond as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application;

(h) the applicant has failed to meet the mortgage servicer capital requirements provided in ~~32-9-171~~ *[section 3]*;

(i) the applicant has failed to meet the minimum mortgage lender net worth requirements provided in 32-9-172; or

(j) the applicant has been found to have violated:

(i) any rule of conduct for persons taking the mortgage loan originator national or state test under the federal Secure and Fair Enforcement for Mortgage Licensing Act; or

(ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling, scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement for Mortgage Licensing Act.

(2) The department may consider an application abandoned if an applicant fails to provide or respond to a request for additional information within the time period specified by the department by rule.

(3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not necessitate denial of the license application. The department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be determined by the law of the jurisdiction in which an individual is convicted. (See part compiler's comment regarding contingent suspension.)"

**Section 11.** Section 32-9-122, MCA, is amended to read:

"**32-9-122. Designated manager and branch office license requirements.** (1) A mortgage broker, mortgage lender, or mortgage servicer shall apply for a license for a main office and for every branch office through the NMLS and maintain a unique identifier. All locations must be within the United States or a territory, including Puerto Rico and the U.S. Virgin Islands.

(2) A mortgage broker or mortgage lender shall designate to the NMLS ~~for each office that originates a residential mortgage loan~~ an individual who is licensed as a mortgage loan originator as the designated manager of the ~~main office and each branch office that originates a residential mortgage loan. A designated manager may be responsible for more than one location~~ *entity*. The designated manager is responsible for the mortgage origination activity conducted ~~at each office to which the designated manager is assigned in the NMLS~~ *by all mortgage loan originators, employees, independent contractors, and agents assigned to the entity*.

(3) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(4) A designated manager is responsible for the operation of the ~~business~~ *entity* at ~~each location~~ *all physical and remote locations* under the designated manager's full charge, supervision, and control.

(5) A mortgage broker or mortgage lender is responsible for the conduct of its employees, including for violations of federal or state laws, rules, or regulations.

(6) A designated manager is responsible for conduct that violates federal or state laws, rules, or regulations by the designated manager and each employee

of the mortgage broker or mortgage lender ~~at each location that the designated manager manages~~.

(7) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage loan originator as designated manager and shall submit information to the NMLS establishing that the subsequent designated manager ~~is in compliance with~~ *complies with* the provisions of this part.

(8) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall remove the sponsorship of the designated manager on the NMLS within 5 business days of the termination.

(9) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See part compiler's comment regarding contingent suspension.)"

**Section 12.** Section 32-9-130, MCA, is amended to read:

"**32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable as provided under this part.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; and

(d) establishing fees for license renewals.

(3) The department may adopt rules~~:~~

~~(a) regarding the mortgage servicer capital requirements provided in 32-9-171; and~~

~~(b)~~ defining supervisory requirements for designated managers.

(4) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(5) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee, service provider, or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner of banking and financial institutions may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner of banking and financial institutions considers relevant to the inquiry.

(6) Each licensee, service provider, or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, service providers, agents, or customers of the licensee or person concerning the business of the

licensee or person or any other person having knowledge that the department considers relevant.

(7) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(8) (a) The total cost for any examination or investigation *of a service provider or unlicensed entity* must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation *of the entity*. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the ~~licensee,~~ *unlicensed person or* service provider~~, or person~~ within 30 days after the date of the invoice. ~~Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license~~ *A person may not be licensed until the cost of examination or investigation is paid*.

(9) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the attorney general's consumer protection office, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the ~~licensee or~~ *unlicensed* person *or service provider* subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (9)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(10) Pursuant to section 1508(d) of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the NMLS;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the NMLS; and

(d) regularly report violations of state or federal law and enforcement actions to the NMLS. (See part compiler's comment regarding contingent suspension.)"

**Section 13.** Section 32-9-160, MCA, is amended to read:

"**32-9-160. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the NMLS and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the NMLS.

(b) ~~Information~~ *Confidential supervisory information* and material may be shared with all state and federal financial services regulatory agencies and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may disclose to a licensee information about a service provider of the licensee.

(3) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(4) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the NMLS concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(5) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(6) ~~Examination reports, information contained in examination reports, and examiners' work papers are confidential material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material~~ *Confidential supervisory information* is not subject to public inspection, subpoena, or discovery. ~~To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, and although filed with the department as provided in this part, that information is not subject to public inspection, subpoena, or discovery except as directed by a court of law.~~

(7) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators included in the NMLS that is available for public access. (See part compiler's comment regarding contingent suspension.)"

**Section 14.** Section 32-9-166, MCA, is amended to read:

"**32-9-166. Reports.** (1) A licensee shall file a written report with the department through the NMLS within 30 business days of any material change to the information provided in a licensee's application.

(2) A licensee shall file a written report with the department within 1 business day after the licensee has reason to know of the occurrence of any of the following:

(a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. 101, et seq., for bankruptcy or reorganization;

(b) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors;

(c) the licensee's decision to cease doing business for any reason;

(d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in which the licensee engages in business or is licensed;

(e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

(f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

(3) A licensee shall file a written report with the department through the NMLS within 15 business days after the licensee has reason to know of the occurrence of any of the following:

(a) fraud, theft, or conversion by a borrower against the licensee;

(b) fraud, theft, or conversion by a licensee;

(c) fraud, theft, or conversion by an employee or independent contractor of a licensee;

(d) violation of a provision of 32-9-124;

(e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; ~~or~~

(f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity~~.~~*; or*

*(g) a cybersecurity incident that affects the licensee's ability to do business or involves access or potential access to a customer's personal information.*

(4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising from the filing of a complaint with the department or furnishing of other information required by this section or required by the department under the authority granted in this section.

(b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:

(i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;

(ii) furnished to or received from other persons subject to the provisions of this part; or

(iii) furnished in complaints filed with the department."

**Section 15. Repealer.** The following section of the Montana Code Annotated is repealed:

32-9-171. Mortgage servicer capital requirements.

**Section 16. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 32, chapter 9, and the provisions of Title 32, chapter 9, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [section 7].

**Section 17. Effective date.** [This act] is effective July 1, 2023.

Approved February 16, 2023

# CHAPTER NO. 5

[HB 39]

AN ACT REVISING LAWS PERTAINING TO PAYMENT FOR SUPPORT OF YOUTH IN NEED OF CARE, YOUTH IN NEED OF INTERVENTION, OR DELINQUENT YOUTH; ELIMINATING THE REQUIREMENT THAT COUNTIES PAY AN ADMINISTRATIVE FEE TO THE STATE GENERAL FUND AS REIMBURSEMENT TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FOSTER CARE PAYMENTS; AMENDING SECTION 52-2-611, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 52-2-611, MCA, is amended to read:

"**52-2-611. Payment for support of youth in need of care, youth in need of intervention, or delinquent youth.** (1) Whenever a youth who is a youth in need of care, a youth in need of intervention, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose,

a foster care payment to the youth care facility at a rate established by the department of public health and human services for the youth's board, clothing, personal needs, treatment, and room.

~~(2) Each county shall pay an administrative fee to the state general fund to reimburse the department, in part, for the costs of administering and providing foster care payments pursuant to 52-2-603.~~

~~(3)~~*(2)* The department shall conduct or arrange for the review required under 41-3-115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

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

Approved February 16, 2023

# CHAPTER NO. 6

[HB 43]

AN ACT REVISING ALCOHOL LAWS RELATING TO THE DEATH OR INCAPACITY OF A LICENSEE OR OWNER OF A LICENSE; PROVIDING REQUIREMENTS FOR CERTAIN PARTIES TO NOTIFY THE DEPARTMENT; PROVIDING FOR DEPARTMENT RULEMAKING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 16-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Death or incapacity of licensee or owner of license -- rulemaking.** (1) The appointed conservator, guardian, personal representative, executor, or administrator shall notify the department within 90 days of appointment in the event of the death or the judicial determination of incapacity of a licensee or owner of the licensee if the licensee is an entity. In any event, the department must be notified within 180 days of the death or the judicial determination of incapacity of the licensee or owner of the licensee.

(2) The department may give the appointed conservator, guardian, personal representative, executor, or administrator or a trustee, or a designee of the appointed conservator, guardian, personal representative, executor, or administrator or a trustee, written approval to continue operation of the licensed business for the duration of the existing license and to renew the license when it expires. The appointed conservator, guardian, personal representative, executor, or administrator or a trustee, or a designee, must qualify for ownership of a license as provided in 16-4-401. If the department does not grant written approval to continue operation of the licensed business or the appointed conservator, guardian, personal representative, executor, or administrator or a trustee, or a designee, does not qualify for ownership of a license as provided in 16-4-401, the license must be placed on nonuse status.

(3) Within 60 days of the closing of a decedent's estate or the judicial determination of restored capacity of a previously incapacitated licensee or owner of a license and removal of a conservator or guardian, the department must be provided with a copy of a court order or other documentation resolving the matter and, if a transfer is warranted, the true party of interest shall apply to transfer the license.

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

**Section 2.** Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred *pursuant to [section 1]* to the *personal representative,* executor*,* or administrator of the estate of a deceased licensee*, or to a designee of the personal representative, executor, or administrator,* when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises within the quota area if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in 16-4-204 and subsections (2) through (6) of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and

other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 16, 2023

# CHAPTER NO. 7

[HB 61]

AN ACT GENERALLY REVISING LAWS RELATED TO CONTINUING EDUCATION COURSES; ELIMINATING THE INSURANCE ADVISORY COUNCIL; ALLOWING CONTRACTS FOR EDUCATION COURSE REVIEW; AND AMENDING SECTION 33-17-1204, MCA.

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

**Section 1.** Section 33-17-1204, MCA, is amended to read:

"**33-17-1204. Review and approval of continuing education courses by commissioner ~~-- advisory council~~.** (1) The commissioner shall~~,~~ ~~after review by and at the recommendations of the advisory council established under subsection (2),~~ approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner ~~shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the national association of insurance and financial advisors - Montana, one representative of the professional insurance agents of Montana, one representative of the Montana state adjusters association, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council~~ *may enter into a contract with a person to review and recommend for approval continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee*.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Approved February 16, 2023

# CHAPTER NO. 8

[HB 67]

AN ACT REPEALING THE TERMINATION DATE PERTAINING TO CERTAIN REGISTRY FEES FOR REAL ESTATE APPRAISERS; REPEALING SECTION 12, CHAPTER 55, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** Section 12, Chapter 55, Laws of 2017, is repealed.

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

Approved February 16, 2023

# CHAPTER NO. 9

[HB 77]

AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES; AMENDING SECTION 44-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 44-4-404, MCA, is amended to read:

"**44-4-404. Appointing authority responsible for applying standards.** *(1)* It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to requiring the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part.

*(2) (a) A public safety officer's appointing authority may apply to the council on behalf of the public safety officer for an extension to complete the minimum training standards. The extension may not exceed 180 days. The application must explain the circumstances that make the extension necessary.*

*(b) When granting an extension, the council may consider the following factors:*

*(i) illness of the public safety officer or a member of the public safety officer's immediate family;*

*(ii) lack of reasonable access to the basic equivalency course;*

*(iii) an unreasonable shortage of personnel in the public safety officer's department; and*

*(iv) any other factors the council considers relevant.*"

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

Approved February 16, 2023

# CHAPTER NO. 10

[HB 78]

AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES; AMENDING SECTION 44-4-404, 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 44-4-404, MCA, is amended to read:

"**44-4-404. Appointing authority responsible for applying standards.** *(1)* It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to requiring the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part.

*(2) (a) If a public safety officer who has not yet completed the minimum training standards is ordered to state or federal military duty within 1 year of the officer's hire date, the officer's employing agency shall notify the council within 10 days of the officer's departure for military duty. The public safety officer's 1-year period to complete minimum training standards must be stayed.*

*(b) Within 10 days of the public safety officer's return to the employing agency from military duty, the officer's employing agency shall notify the council. The public safety officer's 1-year period to complete minimum training standards must then resume.*"

**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 a public safety office within 1 year of the officer's hire date who was ordered to state or federal military duty on or after July 1, 2022.

Approved February 16, 2023

# CHAPTER NO. 11

[SB 7]

AN ACT REVISING LAWS RELATED TO STATE PRISONS AND COUNTY DETENTION CENTER TELECOMMUNICATIONS CONTRACTS; PROVIDING A DEFINITION FOR TELECOMMUNICATIONS SERVICE PROVIDER; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTION 53-30-153, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Detention center telecommunications contracts -- definition.** (1) A county detention center that contracts with a telecommunications service provider to provide telecommunications services for

inmates may join any telecommunications contract with the same per-minute fee as the department of corrections. A county detention center may not enter into a separate telecommunications contract unless the per-minute fee does not exceed the current rate allowed by the federal communications commission but not more than 21 cents a minute.

(2) Each week, an inmate is allowed one free phone call, not to exceed 10 minutes, and one free video call, not to exceed 25 minutes, to the extent that video calling is offered at the detention center.

(3) An inmate telecommunications contract may not include ancillary service fees, including prepaid phone cards, collect calls, and single pay calls that total more than 3% of the base charge.

(4) "Telecommunications service provider" has the meaning provided for "operator service provider" in 69-3-1102.

**Section 2.** Section 53-30-153, MCA, is amended to read:

"**53-30-153. Telephone account requirements for state prisons -- protected accounts -- disclosure required -- rulemaking -- definitions.** (1) A state prison that contracts with a telecommunications service provider to provide telecommunications services for inmates shall ~~to the extent feasible,~~ contract with a telecommunications service provider to provide communications services for inmates that:

(a) provides public safety precautions required by the department of corrections;

(b) prohibits expiration of prepaid minutes or charges;

(c) does not charge additional usage or dormancy fees;

(d) does not charge excessive intrastate fees that are greater than 10 cents a minute;

~~(e) does not require monthly usage fees; and~~

*(e) does not include ancillary service fees, including prepaid phones cards, collect calls, and single pay calls that total more than 3% of the base charge; and*

(f) allows rollover of unused, prepaid minutes into the next month unless the inmate for whom the account was set up is no longer able to use the telephone account, whether for disciplinary reasons or other reasons specified by department rule. No refund is required for unexpired minutes subject to this subsection (1)(f).

(2) Every contract entered into by a state prison for communications services under subsection (1) must require the telecommunications service provider to notify the purchaser of a prepaid telephone account of any fees or refunds that are available for unused minutes on a prepaid telephone card and mail the refund to the purchaser's address of record.

(3) The department of corrections has rulemaking authority to implement this section and shall notify the public service commission of the allowable rate that a telecommunications service provider may charge for intrastate calls under contract with the department of corrections.

(4) For purposes of this section, the following definitions apply:

(a) "Prepaid telephone account" means a system, whether purchased as a calling card or set up as an account with a telecommunications service provider, to provide telephonic connections in which the purchaser pays for minutes prior to use. The term does not include a lifeline account, defined under 47 CFR 54.401, for which a telecommunications carrier receives universal service support.

(b) "State prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

(c) "Telecommunications service provider" has the meaning provided for "operator service provider" in 69-3-1102."

**Section 3. Unfunded mandate laws superseded.** The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

**Section 4. Transition.** The department of corrections shall include an option for a county detention center to opt-in to a telecommunications contract at the same per-minute rate offered to the department of corrections.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 1].

**Section 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 April 30, 2024.

Approved February 16, 2023

# CHAPTER NO. 12

[SB 34]

AN ACT GENERALLY REVISING LAWS RELATING TO THE PROTECTION OF VULNERABLE ADULTS; REVISING TERMINOLOGY RELATED TO PROTECTIVE SERVICES; DEFINING VULNERABLE ADULT; REQUIRING ADDITIONAL PROFESSIONALS TO REPORT ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; PROVIDING A PENALTY FOR FALSE REPORTING; AND AMENDING SECTIONS 30-14-144, 32-1-1501, 32-1-1502, 32-1-1503, 32-1-1504, 42-3-204, 45-6-333, 46-16-222, 50-5-1104, 52-1-103, 52-3-201, 52-3-202, 52-3-203, 52-3-204, 52-3-206, 52-3-207, 52-3-801, 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-3-814, 52-3-815, 52-3-821, AND 52-3-825, MCA.

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

**Section 1.** Section 30-14-144, MCA, is amended to read:

"**30-14-144. Additional penalty for unfair or deceptive act committed against ~~older person or developmentally disabled person~~ *vulnerable adult*.** (1) In addition to any civil penalty imposed pursuant to 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated against ~~an older person or against a developmentally disabled person~~ *a vulnerable adult* is liable for an additional civil penalty not to exceed $10,000 for each violation if the court finds that:

(a) the person knew or should have known that the person's conduct was directed toward one or more ~~older or developmentally disabled persons~~ *vulnerable adults*; or

(b) the person's conduct caused ~~an older or developmentally disabled person~~ *a vulnerable adult* to suffer one of the following:

(i) loss or encumbrance of a primary residence;

(ii) loss of principal employment or other source of income;

(iii) substantial loss of property set aside for retirement or for personal or family care and maintenance;

(iv) substantial loss of payments received under a pension or retirement plan or a government benefits program; or

(v) loss of assets essential to the health or welfare of the ~~older or disabled person~~ *vulnerable adult*.

(2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil penalties ordered by the court under this section.

~~(3) As used in this section:~~

~~(a) "developmentally disabled person" means a person with a developmental disability as defined in 53-20-102; and~~

~~(b) "older person" has the meaning provided in 52-3-803.~~

*(3) As used in this section, "vulnerable adult" has the meaning provided in 52-3-803.*"

**Section 2.** Section 32-1-1501, MCA, is amended to read:

"**32-1-1501. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Covered agency" means any of the following:

(a) a federal, state, or local law enforcement agency; or

(b) the department of public health and human services as provided in 2-15-2201 or its local affiliate.

(2) "Covered financial institution" means any bank, credit union, savings bank, savings and loan association, or trust company operating in Montana.

(3) "Financial exploitation" means:

(a) the unreasonable use of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with regard to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, rights, credit accounts, or property;

(b) an act taken by a person who has the trust and confidence of ~~an older person or of a person with a developmental disability~~ *a vulnerable adult* to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, rights, credit accounts, or property; or

(c) the unreasonable use of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with regard to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the ~~person's~~ *vulnerable adult's* money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or property.

~~(4) "Older person" means a person who is at least 60 years of age.~~

~~(5) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.~~

~~(6)~~*(4)* "Transaction" means any of the following as applicable to services provided by a covered financial institution:

(a) a transfer or request to transfer or disburse funds or assets in an account;

(b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a money order, cashier's check, or official check;

(c) a request to negotiate a check or other negotiable instrument;

(d) a request to change the ownership of, or access to, an account;

(e) a request to sell or transfer securities or other assets, or a request to affix a medallion stamp or provide any form of guarantee or endorsement in connection with an attempt to sell or transfer securities or other assets, if the person selling or transferring the securities or assets is not required to register under 30-10-201;

(f) a request for a loan, extension of credit, or draw on a line of credit;

(g) a request to encumber any movable or immovable property; and

(h) a request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for ~~an older person or a person with a developmental disability~~ *a vulnerable adult* at death.

*(5) "Vulnerable adult" has the meaning provided in 52-3-803.*"

**Section 3.** Section 32-1-1502, MCA, is amended to read:

"**32-1-1502. Notices.** (1) A covered financial institution may notify any covered agency if the covered financial institution believes that the financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) A covered financial institution may notify any third party reasonably associated with ~~an older person or a person with a developmental disability~~ *a vulnerable adult* if the covered financial institution believes that the financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is occurring, has or may have occurred, is being attempted, or has been or may have been attempted. A third party reasonably associated with ~~an older person or a person with a developmental disability~~ *a vulnerable adult* includes but is not limited to the following:

(a) a parent, spouse, adult child, sibling, or other known family member or close associate of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*;

(b) an authorized contact provided by ~~an older person or a person with a developmental disability~~ *a vulnerable adult* to the covered financial institution;

(c) a co-owner, additional authorized signatory, or beneficiary on ~~an older person or a person with a developmental disability's~~ *a vulnerable adult's* account; and

(d) an attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected by the ~~older person, a person with a developmental disability~~ *vulnerable adult*, a court, a governmental agency, or a third party to manage some or all of the financial affairs of the ~~older person or person with a developmental disability~~ *vulnerable adult*.

(3) A covered financial institution may choose not to notify any third party reasonably associated with ~~an older person or a person with a developmental disability~~ *a vulnerable adult* of suspected financial exploitation of the ~~older person or person with a developmental disability~~ *vulnerable adult* if the covered financial institution believes the third party is, may be, or may have been engaged in the financial exploitation of the ~~older person or person with a developmental disability~~ *vulnerable adult*.

(4) A covered financial institution shall make a reasonable effort, at least annually, to notify the appropriate employees of the covered financial institution of their ability to report potential financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* to personnel within the covered financial institution."

**Section 4.** Section 32-1-1503, MCA, is amended to read:

"**32-1-1503. Delaying transactions.** (1) A covered financial institution may, but is not required to, delay completion or execution of a transaction involving an account of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*, an account on which ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is a beneficiary, an account in which the ~~older person or a person with a developmental disability~~ *vulnerable adult* has a financial interest, or an account of a person suspected of perpetrating financial exploitation if either of the following conditions apply:

(a) the covered financial institution reasonably believes that the requested transaction may result in financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*; or

(b) a covered agency provides information demonstrating to the financial institution that it is reasonable to believe that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution shall, no later than 2 business days after the transaction is delayed, send written notification of the delay and the reason for the delay to all parties authorized to transact business on the account for which the covered financial institution has contact information unless any party is reasonably believed to have engaged in attempted financial exploitation of the ~~older person or a person with a developmental disability~~ *vulnerable adult*. The notification described in this subsection may be provided by electronic means.

(3) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution may provide notification of the delay, the reason for the delay, and any additional information about the transaction to any covered agency.

(4) Except as ordered by a court, a covered financial institution is not required to delay a transaction when provided with information by a covered agency alleging that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted but may use its discretion to determine whether to delay a transaction based on the information available to the covered financial institution.

(5) Except as provided in subsection (6), any delay of a transaction as authorized pursuant to this section expires or is terminated when the earliest of either of the following circumstances occur:

(a) the covered financial institution reasonably determines that the transaction will not result in financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*; or

(b) 15 business days pass from the date on which the covered financial institution first initiated the delay of the transaction.

(6) (a) A covered financial institution may extend the delay provided for in subsection (5) upon receiving a request to extend the delay from any covered agency, in which case the delay expires or is terminated no later than 25 business days from the date on which the covered financial institution first initiated the delay of the transaction.

(b) A court of competent jurisdiction may enter an order extending or shortening a delay or providing other relief based on the petition of the covered financial institution, any covered agency, or other interested party."

**Section 5.** Section 32-1-1504, MCA, is amended to read:

"**32-1-1504. Immunity.** (1) (a) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives have no duty to act pursuant to this part or otherwise to protect ~~an older person or a person with a developmental disability~~ *a vulnerable adult* from financial exploitation by a third person.

(b) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives are immune from all criminal, civil, and administrative liability for not taking action pursuant to this part.

(c) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, or other representatives who choose to act pursuant to the authority granted in this part are immune from all criminal, civil, and administrative liability for any act taken pursuant to this part unless the act of the financial institution or its representatives was done in bad faith and caused pecuniary loss to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* who was suspected of being a victim of financial exploitation.

(2) The immunity provided for in this section may not extend to any individual in a case when the individual is a principal, a conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*."

**Section 6.** Section 42-3-204, MCA, is amended to read:

"**42-3-204. Contents of preplacement evaluation.** (1) The preplacement evaluation report must contain the following information if available:

(a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

(b) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;

(c) physical and mental health and any history of abuse of alcohol or drugs;

(d) educational and employment history and any special skills;

(e) property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;

(f) any previous request for an evaluation or involvement in an adoptive placement and the outcome of the evaluation or placement;

(g) whether the individual has been charged with or convicted of domestic violence or has been involved in a substantiated charge of child abuse or neglect or ~~elder~~ abuse or neglect *of a vulnerable adult as defined in 52-3-803* and the disposition of the charges;

(h) whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child;

(i) whether the individual has been convicted of a crime other than a minor traffic violation;

(j) whether the individual has located a parent interested in placing a child with the individual for adoption and, if so, a brief description of the parent and the child; and

(k) any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the individual's home and the functioning of other children in the individual's household.

(2) The report must contain recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(3) A preplacement evaluation is valid for 1 year following its date of completion and must be updated if there is a significant change in circumstances.

(4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive parent must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address the appropriateness of placing the specifically identified child or children who will be the subject of the adoption proceedings with the prospective adoptive parent."

**Section 7.** Section 45-6-333, MCA, is amended to read:

"**45-6-333. Exploitation of ~~older person, incapacitated person, or person with developmental disability~~ *incapacitated person or vulnerable adult.*** (1) A person commits the offense of exploitation of ~~an older person, an incapacitated person, or a person with a developmental disability~~ *an incapacitated person or vulnerable adult* if the person:

(a) purposely or knowingly obtains or uses or attempts to obtain or use ~~an older person's, incapacitated person's, or developmentally disabled person's~~ *an incapacitated person's or vulnerable adult's* funds, assets, or property with the intent to temporarily or permanently deprive the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult* of the use, benefit, or possession of funds, assets, or property or to benefit someone other than the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult* by means of deception, duress, menace, fraud, undue influence, or intimidation; and

(b) (i) stands in a position of trust or confidence with the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult*; or

(ii) has a business relationship with the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult.*

(2) A person commits the offense of exploitation of ~~an older person, an incapacitated person, or a person with a developmental disability~~ *an incapacitated person or vulnerable adult* if the person:

(a) purposely or knowingly obtains personal identifying information of ~~another person~~ *the incapacitated person or vulnerable adult* and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the ~~other person~~ *incapacitated person or vulnerable adult* without the consent of the ~~other person~~ *incapacitated person or vulnerable adult*; and

(b) (i) stands in a position of trust or confidence with the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult*; or

(ii) has a business relationship with the ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult.*

(3) A person convicted of the offense of exploitation of ~~an older person, an incapacitated person, or a person with a developmental disability~~ *an incapacitated person or vulnerable adult* shall be fined an amount not to exceed $10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

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

~~(a) "Developmental disability" has the meaning provided in 53-20-102.~~

~~(b)~~*(a)* "Incapacitated person" has the meaning provided in 72-5-101.

*(b) "Vulnerable adult" has the meaning provided in 52-3-803.*

~~(c) "Older person" means a person who is 65 years of age or older.~~"

**Section 8.** Section 46-16-222, MCA, is amended to read:

"**46-16-222. Testimony of third person in cases of exploitation of ~~older person, incapacitated person, or developmentally disabled person~~ *incapacitated person or vulnerable adult*.** (1) Otherwise inadmissible hearsay may be admitted into evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

(a) the declarant of the out-of-court statement is ~~an older person, an incapacitated person, or an individual with a developmental disability~~ *an incapacitated person or vulnerable adult* who is:

(i) an alleged victim of exploitation of ~~an older person, incapacitated person, or developmentally disabled person~~ *an incapacitated person or vulnerable adult* pursuant to 45-6-333 that is the subject of the criminal proceeding; or

(ii) a witness to an alleged exploitation of ~~an older person, incapacitated person, or developmentally disabled person~~ *an incapacitated person or vulnerable adult* pursuant to 45-6-333 that is the subject of the criminal proceeding;

(b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) the ~~older person, the incapacitated person, or the individual with a developmental disability~~ *incapacitated person or vulnerable adult* is unavailable as a witness;

(d) the hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the testimony.

(3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the hearsay declarant, including:

(i) the individual's age;

(ii) the individual's ability to communicate verbally;

(iii) the individual's ability to comprehend the statements or questions of others;

(iv) the individual's ability to tell the difference between truth and falsehood;

(v) the individual's motivation to tell the truth, including whether the individual understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the individual possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the individual's hearsay statement, including:

(i) the witness's relationship to the individual;

(ii) whether the relationship between the witness and the individual has an impact on the trustworthiness of the individual's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the individual's statement; and

(iv) the circumstances under which the witness heard the individual's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the individual could confide;

(c) information regarding the individual's statement, including:

(i) whether the statement contains knowledge not normally attributed to an individual of the declarant's age;

(ii) whether the statement was spontaneous;

(iii) the suggestiveness of statements by other persons to the individual at the time that the individual made the statement;

(iv) if statements were made by the individual to more than one person, whether those statements were consistent;

(v) the nearness in time of the statement to the incident at issue; and

(vi) whether the statement is testimonial or nontestimonial in character; and

(d) other considerations that in the judge's opinion may bear on the admissibility of the individual's hearsay testimony.

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

~~(a) "Developmental disability" has the meaning provided in 53-20-102.~~

~~(b)~~*(a)* "Incapacitated person" has the meaning provided in 72-5-101.

*(b) "Vulnerable adult" has the meaning provided in 52-3-803.*

~~(c) "Older person" means a person who is 65 years of age or older.~~"

**Section 9.** Section 50-5-1104, MCA, is amended to read:

"**50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or the resident's authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's

health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana ~~Elder and Persons With Developmental Disabilities Abuse Prevention Act~~ *Vulnerable Adult Prevention of Abuse Act*, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in another part of the facility where the resident must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance."

**Section 10.** Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the Interstate Compact for the Placement of Children;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and

(b) administer ~~elder~~ *vulnerable adult* abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, for administration of child and adult protection services for each county; and

(14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

**Section 11.** Section 52-3-201, MCA, is amended to read:

"**52-3-201. Short title.** This part may be cited as the "Protective Services Act for ~~Aged Persons or Disabled~~ *Vulnerable* Adults"."

**Section 12.** Section 52-3-202, MCA, is amended to read:

"**52-3-202. Definitions.** As used in this part, the following definitions apply:

~~(1) "Aged person" means an aged person as defined by the department.~~

~~(2)~~*(1)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3) "Disabled adult" means a person 18 years of age or older who is defined by the department as disabled or who is a person with developmental disabilities, as defined in 53-20-102.~~

~~(4)~~*(2)* "Protective services" means ~~assistance to an aged person or disabled adult in obtaining the services offered by the department~~ *emergency services that are provided in a coordinated effort by the department to a vulnerable adult in order to prevent or terminate the abuse, neglect, exploitation, intimidation, or abandonment of the vulnerable adult.*

*(3) "Vulnerable adult" has the meaning provided for in 52-3-803.*"

**Section 13.** Section 52-3-203, MCA, is amended to read:

"**52-3-203. Purpose.** To ensure that ~~aged persons or disabled~~ *vulnerable* adults in the state ~~be~~ *are* afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, ~~this~~ *the* legislature declares *that* the department ~~to be recognized as~~ *is* the public agency responsible for providing ~~those~~ *protective* services."

**Section 14.** Section 52-3-204, MCA, is amended to read:

"**52-3-204. Duties of department.** The department ~~shall be~~ *is* responsible for acting on requests for protective services from ~~aged persons or disabled~~ *vulnerable* adults or from relatives, friends, or other reputable persons requesting ~~those~~ *the* services on behalf of ~~an aged person or disabled~~ *a vulnerable* adult."

**Section 15.** Section 52-3-206, MCA, is amended to read:

"**52-3-206. Annual reports.** The department shall make annual reports on the number of people served by this part and the type of protective services made available to the ~~aged persons and disabled~~ *vulnerable* adults of Montana."

**Section 16.** Section 52-3-207, MCA, is amended to read:

"**52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of protective services does not create a guardianship or conservatorship relationship between the department and the ~~aged person or disabled~~ *vulnerable* adult ~~unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4~~.

(2) The department may not provide protective services that impose a legal limitation or restriction on ~~an aged person or a disabled~~ *a vulnerable* adult:

(a) except emergency protective services provided under 52-3-804; or

(b) unless the department has been appointed legal guardian ~~or conservator for that person~~ *for the vulnerable adult* under the provisions of Title 72, chapter 5, part 3 ~~or 4~~."

**Section 17.** Section 52-3-801, MCA, is amended to read:

"**52-3-801. Short title.** This part may be cited as the "Montana ~~Elder and Persons With Developmental Disabilities Abuse Prevention Act~~ *Vulnerable Adult Prevention of Abuse Act*"."

**Section 18.** Section 52-3-802, MCA, is amended to read:

"**52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's ~~elderly persons and persons with developmental disabilities~~ *vulnerable adults* through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation."

**Section 19.** Section 52-3-803, MCA, is amended to read:

"**52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury;

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(c) the causing of personal degradation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* in a place where the ~~older person or person with a development disability~~ *vulnerable adult* has a reasonable expectation of privacy.

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

(3) "Exploitation" means:

(a) the unreasonable use of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* or of a power of attorney, conservatorship, or guardianship with regard to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, or property;

(b) an act taken by a person who has the trust and confidence of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* to obtain

control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of or interest in the ~~person's~~ *vulnerable adult's* money, assets, or property;

(c) the unreasonable use of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* or of a power of attorney, conservatorship, or guardianship with regard to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the ~~person's~~ *vulnerable adult's* money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~ *vulnerable adult* of the ownership, use, benefit, or possession of the ~~person's~~ *vulnerable adult's* money, assets, or property.

(4) "Incapacitated person" has the meaning ~~given~~ *provided* in 72-5-101.

(5) "Long-term care facility" ~~means a facility defined~~ *has the meaning provided* in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for ~~an older person or a person with a developmental disability~~ *a vulnerable adult* or who has voluntarily assumed responsibility for the ~~person's~~ *a vulnerable adult's* care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the ~~older person or the person with a developmental disability~~ *vulnerable adult*.

~~(8) "Older person" means a person who is at least 60 years of age.~~

~~(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.~~

~~(10)~~*(8)* "Personal degradation" means publication or distribution of a printed or electronic photograph or video of ~~an older person or a person with a developmental disability~~ *a vulnerable adult* when the person publishing or distributing intends to demean or humiliate the ~~older person or person with a developmental disability~~ *vulnerable adult* or knows or reasonably should know that the publication or distribution would demean or humiliate a reasonable person. Personal degradation does not include the recording and dissemination of images or video for treatment, diagnosis, regulatory compliance, or law enforcement purposes, as part of an investigation, or in accordance with a facility or program's confidentiality policy and release of information or consent policy.

~~(11)~~*(9)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

~~(12)~~*(10)* "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter 5, part 5, and Title 45, chapter 8, part 2.

*(11) "Vulnerable adult" means a person who:*

*(a) is 60 years of age or older; or*

*(b) is 18 years of age or older and:*

*(i) is a person with a physical or mental impairment that substantially limits or restricts the person's ability to provide for their own care or protection; or*

*(ii) has a developmental disability as defined in 53-20-102.*"

**Section 20.** Section 52-3-804, MCA, is amended to read:

"**52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, for ~~an older person or a person with a developmental disability~~ *a vulnerable adult* alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a ~~person~~ *vulnerable adult* alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the ~~person's~~ *vulnerable adult's* caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the ~~person~~ *vulnerable adult* is found may order a law enforcement officer or a department ~~social worker~~ *representative* to enter the premises to conduct an investigation ~~upon~~ *on* finding that there is probable cause to believe that the ~~person~~ *vulnerable adult* is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that ~~an older person or a person with a developmental disability~~ *a vulnerable adult* alleged to be abused, sexually abused, neglected, or exploited is suffering from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the ~~person~~ *vulnerable adult* is *an* incapacitated *person*, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the ~~person~~ *vulnerable adult* to the appropriate placement;

(iii) not later than 2 judicial days following placement of the ~~person~~ *vulnerable adult*, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

**Section 21.** Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** (1) The county attorney or the department ~~of public health and human services~~ shall convene one or more temporary or permanent interdisciplinary adult protective service teams. ~~These~~ *The* teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to ~~older persons and persons with developmental disabilities~~ *vulnerable adults* who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of *the* adult protective services *unit* of the department ~~of public health and human services~~ or the department's designee shall serve as the team's coordinator. Members must include ~~a social worker~~ *an adult protection specialist*, a member of a local law enforcement agency, a representative of the medical profession, and a county

attorney or the county attorney's designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the *supervisor of the adult protective services unit of the* department.

(2) When the team considers a matter involving an adult with developmental disabilities in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part."

**Section 22.** Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that ~~an older person or a person with a developmental disability~~ *a vulnerable adult* known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the ~~person~~ *vulnerable adult* is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the ~~person~~ *vulnerable adult* resides or in which the acts that are the subject of the report occurred;

(b) if the ~~person~~ *vulnerable adult* is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 *and 52-3-804* and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the ~~older person or the person with a developmental disability~~ *vulnerable adult* resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) ~~a social worker or other~~ *an* employee of the state, a county, or a municipality assisting ~~an older person or a person with a developmental disability~~ *a vulnerable adult* in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* pursuant to a contract with a state or federal agency; ~~and~~

(i) an employee of the department while in the conduct of the employee's duties*; and*

*(j) a conservator, legal guardian, or representative payee.*

*(4) Except as provided under 45 CFR 1324.19, a long-term care ombudsman who is a professional or other person listed in subsection (3) shall be exempt from mandatory reporting of abuse, neglect, and exploitation when knowledge of the facts required to be reported are acquired while the long-term care ombudsman is acting in the ombudsman's official capacity as an ombudsman.*

~~(4)~~*(5)* Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1)."

**Section 23.** Section 52-3-812, MCA, is amended to read:

"**52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally, by telephone ~~or~~, in person*, or electronically through the department*. A person who receives an oral report shall prepare it in writing as soon as possible.

(2) The report referred to under this section must contain:

(a) the names and addresses of the ~~older person or the person with a developmental disability~~ *vulnerable adult* and the person, if any, responsible for ~~that person's~~ *the vulnerable adult's* care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the ~~older person or the person with a developmental disability~~ *vulnerable adult*;

(c) to the extent known, the ~~person's~~ *vulnerable adult's* age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect, or exploitation sustained by the ~~older person or the person with a developmental disability~~ *vulnerable adult* and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other ~~older persons or persons with developmental disabilities~~ *vulnerable adults* committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and

(d) the name and address of the person making the report."

**Section 24.** Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, ~~upon~~ *on written* request, to the following persons or entities in this or any other state:

(a) a physician who is caring for ~~an older person or a person with a developmental disability~~ *a vulnerable adult* who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the ~~older person or the person with a developmental disability~~ *vulnerable adult* if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the ~~person~~ *vulnerable adult* named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not ~~legally incompetent~~ *an incapacitated person*;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect,

or exploitation and if the identity of the ~~older person or the person with a developmental disability~~ *vulnerable adult* who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a ~~person~~ *vulnerable adult* alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a ~~person~~ *vulnerable adult* alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~; or

(iii) the person is carrying out background screening or employment-related or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with ~~an older person or a person with a developmental disability~~ *a vulnerable adult* through employment or volunteer activities if the disclosure is limited to information that indicates a risk to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a ~~person~~ *vulnerable adult* alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a ~~person~~ *vulnerable adult* alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 10805, ~~and~~ *or* 42 U.S.C. 15043;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the ~~older person, person with a developmental disability,~~ *vulnerable adult* or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of ~~an older person or a person with a developmental disability~~ *a vulnerable adult*; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of

~~an older person or a person with a developmental disability~~ *a vulnerable adult* and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

**Section 25.** Section 52-3-814, MCA, is amended to read:

"**52-3-814. Immunity from civil and criminal liability.** (1) A person who makes a report required or authorized to be made under 52-3-811 is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

(2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer activities may have unsupervised contact with ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is immune from civil liability unless the person providing or using the information acts in bad faith or with malicious purpose."

**Section 26.** Section 52-3-815, MCA, is amended to read:

"**52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and submitted.** (1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~ *vulnerable adult* or without consent of the ~~person~~ *vulnerable adult* if it appears that the ~~person~~ *vulnerable adult* is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected, or exploited ~~person~~ *vulnerable adult* and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.

(2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~ *vulnerable adult* or without consent of the ~~person~~ *vulnerable adult* if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, neglect, or exploitation.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

**Section 27.** Section 52-3-821, MCA, is amended to read:

"**52-3-821. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the ~~person~~ *vulnerable adult* who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803."

**Section 28.** Section 52-3-825, MCA, is amended to read:

"**52-3-825. Penalties.** (1) A person ~~who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813~~ is guilty of an offense and ~~upon~~ *on* conviction is punishable as provided in 46-18-212 *if the person purposely or knowingly:*

*(a) fails to make a report required by 52-3-811;*

*(b) fails to disclose the contents of a case record or report in violation of 52-3-813;*

*(c) gives false information to any adult protective services representative, county attorney, or law enforcement officer with the purpose to implicate another person;*

*(d) reports to adult protective services, the county attorney, or law enforcement authorities an offense or other incident within the person's concern knowing that it did not occur; or*

*(e) pretends to furnish adult protective services, the county attorney, or law enforcement authorities with information relating to an offense or incident when the person knows that the person has no information relating to the offense.*

(2) (a) Except as provided in subsection (2)(c), a person who purposely or knowingly abuses, sexually abuses, or neglects ~~an older person or a person with a developmental disability~~ *a vulnerable adult* 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) Except as provided in subsection (2)(c), a person who negligently abuses ~~an older person or a person with a developmental disability~~ *a vulnerable adult* is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed $10,000, or both.

(c) (i) A person who causes personal degradation to ~~an older person or a person with a developmental disability~~ *a vulnerable adult* in a place where the ~~older person or person with a developmental disability~~ *vulnerable adult* has a reasonable expectation of privacy is, for a first offense, guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both;

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(c)(i), the person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years or be fined an amount not to exceed $10,000, or both.

(d) A person ~~with~~ *18 years of age or older who has* a developmental disability*, as defined in 53-20-102,* may not be charged under subsections (2)(a) through (2)(c)."

Approved February 16, 2023

# CHAPTER NO. 13

[SB 35]

AN ACT REPEALING THE BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS ACT; REPEALING SECTIONS 32-11-101, 32-11-102, 32-11-103, 32-11-104, 32-11-105, 32-11-106, 32-11-107, 32-11-108, 32-11-201, 32-11-202, 32-11-203, 32-11-204, 32-11-205, 32-11-206, 32-11-207, 32-11-208, 32-11-209, 32-11-210, 32-11-211, 32-11-212, 32-11-215, 32-11-216, 32-11-217, 32-11-218, 32-11-219, 32-11-220, 32-11-221, 32-11-222, 32-11-223, 32-11-224, 32-11-225, 32-11-226, 32-11-301, 32-11-302, 32-11-303, 32-11-304, 32-11-305, 32-11-306, 32-11-307, 32-11-308, 32-11-309, 32-11-310, 32-11-311, 32-11-312, 32-11-313, 32-11-401, 32-11-402, 32-11-403, 32-11-404, 32-11-405, 32-11-406, 32-11-407, 32-11-411, 32-11-412, 32-11-413, AND 32-11-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

32-11-101. Short title.
32-11-102. Definitions.
32-11-103. Purposes.
32-11-104. Meetings of directors and shareholders called by department.
32-11-105. Administration -- rules -- orders -- declaratory rulings -- judicial review.
32-11-106. Authority of department.
32-11-107. Confidentiality.
32-11-108. Application of law under which licensee incorporated.
32-11-201. Application procedure.
32-11-202. Requisite net worth.
32-11-203. Fees -- special revenue account.
32-11-204. Criteria for directors, officers, and controlling persons.
32-11-205. Determination of likelihood of future noncompliance.
32-11-206. Denial of application.
32-11-207. License -- display -- transfer or assignment -- surrender.
32-11-208. Corporate name and representation of status.
32-11-209. Misrepresentation.
32-11-210. Dividends.
32-11-211. Stock buyback.
32-11-212. Offices.
32-11-215. Board of directors.
32-11-216. Notice of officer and director changes.
32-11-217. Business of licensee -- general powers.
32-11-218. Financing assistance allowed -- forms, terms, conditions.
32-11-219. Participation in government programs.
32-11-220. Scope of management assistance.
32-11-221. Limitation to purposes of business.
32-11-222. Control of other businesses.

32-11-223. Control of assisted business.
32-11-224. Control of business providing financing assistance and management assistance or other businesses.
32-11-225. Business practice standards and reserve.
32-11-226. Other licenses.

**Section 2. Repealer.** The following sections of the Montana Code Annotated are repealed:

32-11-301. Disclosure of potential conflict of interest -- terms and conditions -- examples.
32-11-302. Acquiring control of licensee -- application -- determination.
32-11-303. Merger -- purchase -- sale.
32-11-304. Records and report requirements.
32-11-305. Records kept by others.
32-11-306. Information on economic development effect.
32-11-307. Examination of licensees and subsidiaries.
32-11-308. Inspection or copying refusal.
32-11-309. Restrictions on financing assistance
32-11-310. Contemporaneous financing assistance.
32-11-311. Compensation of associate.
32-11-312. Associates.
32-11-313. Exemptions.
32-11-401. Investigations -- powers -- failure to comply or testify.
32-11-402. Injunction -- appointment of receiver.
32-11-403. Cease and desist orders.
32-11-404. Penalties -- license suspension and revocation -- restitution.
32-11-405. Removal and suspension orders for certain acts.
32-11-406. Removal and suspension orders in cases of indictment or conviction.
32-11-407. Hearings on orders -- recision and modification.
32-11-411. Disclosure to shareholders.
32-11-412. Orders restricting additional financing assistance.
32-11-413. Taking possession of licensee.
32-11-414. Appeals.

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

Approved February 16, 2023

# CHAPTER NO. 14

[SB 40]

AN ACT GENERALLY REVISING NATIONAL GUARD PAY AND SPECIAL DUTY STATUS; AND AMENDING SECTIONS 10-1-501, 10-1-502, AND 10-1-505, MCA.

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

**Section 1.** Section 10-1-501, MCA, is amended to read:

"**10-1-501. Pay for militia.** (1) When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses must be drawn upon funds appropriated by the legislature.

(2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the members are entitled to pay and allowances as provided in 10-1-502~~(3)~~*(4)*. Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature."

**Section 2.** Section 10-1-502, MCA, is amended to read:

"**10-1-502. Pay and allowances.** (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state must receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

*(2) A rated aviation officer performing flying duties in support of a state declaration of emergency or disaster may receive pay at a rate comparable to the pay for other state employees engaged in aerial wildfire suppression efforts if the adjutant general determines that payment at that rate is appropriate.*

~~(2)~~*(3)* An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state must receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member must receive the pay and allowances as prescribed for an enlisted member of corresponding grade and length of service when on active duty in federal service.

~~(3)~~*(4)* A national guard member placed on state duty for special work, as defined in 10-1-505, must receive the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of service when on active duty in federal service.

~~(4)~~*(5)* The pay and allowances provided for in subsections (1) and (2) may not be paid when pay and allowances for the active duty are provided out of federal funds."

**Section 3.** Section 10-1-505, MCA, is amended to read:

"**10-1-505. State duty for special work -- definition.** (1) To fulfill the department's duties under 10-1-102, the adjutant general as the department head under 2-15-1201 may use national guard resources and place Montana national guard personnel on state duty for special work.

(2) (a) For purposes of this section, "state duty for special work" means:

(i) any activity, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution; ~~or~~

(ii) cybersecurity training and operations, including but not limited to vulnerability assessments, situational awareness, investigation, analysis, and incident response*; or*

*(iii) support operations of the youth challenge program*.

(b) State duty for special work does not include active duty ordered by the governor under Article VI, section 13, of the Montana constitution."

Approved February 16, 2023

# CHAPTER NO. 15

[SB 102]

AN ACT GENERALLY REVISING STATE LOTTERY AND SPORTS WAGERING LAWS RELATED TO SALES AGENT COMMISSIONS; EXEMPTING SALES AGENTS' COMMISSIONS SET BY THE STATE LOTTERY AND SPORTS WAGERING COMMISSION FROM RULE REQUIREMENTS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; REVISING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-102, 23-7-202,

AND 23-7-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, which is exempt from the contested case and judicial review of contested cases provisions contained in this chapter. However, the board is subject to the remainder of the provisions of this chapter.

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to

the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM; ~~or~~

(vi) game parameters approved by the state lottery *and sports wagering* commission relating to a specific lottery game. This subsection (11)(b)(vi) does not exempt generally applicable policies governing the state lottery that are otherwise subject to the Montana Administrative Procedure Act*; or*

*(vii) policies relating to sports wagering sales agents' commissions prescribed by the state lottery and sports wagering commission*.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Small business" means a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees.

(14) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

(15) "Supplemental notice" means a notice that amends the proposed rules or changes the timeline for public participation."

**Section 2.** Section 23-7-202, MCA, is amended to read:

"**23-7-202. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery;

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery and sports wagering games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state general fund and to the Montana STEM scholarship program special revenue account under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets, chances, wagers, or bets to be paid out as prizes;

(5) determine the price of each ticket, chance, wager, or bet and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games and sports wagering;

(7) carry out, with the director, a continuing study of the state lottery in Montana and other states' lotteries and sports wagering operations to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with:

(a) other lottery states and countries to offer lottery games; or

(b) an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, and to the legislature in accordance with 5-11-210; ~~and~~

(10) adopt rules relating to lottery and sports wagering ~~and sales agents' commissions~~ and any other rules necessary to carry out this part, including but not limited to:

(a) acceptance of wagers on a sports event or a series of sports events;

(b) the type of wagering tickets that may be used;

(c) method of issuing tickets;

(d) method of accounting and associated reporting minimums to be used by sales agent;

(e) sales agent licensing requirements and prohibitions;

(f) method of age verification;

(g) player exclusion requirements;

(h) protections for an individual placing a wager;

(i) contribution and participation in responsible gaming and consumer protection activities and programs; and

(j) ensuring game integrity through monitoring and reporting of suspicious betting activity and equipment tampering*; and*

*(11) prescribe policies relating to sports wagering sales agents' commissions without conducting rulemaking under Title 2, chapter 4, but otherwise meet the requirements of this chapter*."

**Section 3.** Section 23-7-301, MCA, is amended to read:

"**23-7-301. Sales agents -- licenses.** (1) Lottery tickets, chances, wagers, or bets may be sold only by a sales agent licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery games and sports wagering tickets, chances, wagers, or bets may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and the applicant's business or activity;

(ii) the accessibility of the applicant's place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) A person under 18 years of age may not sell lottery tickets, chances, wagers, or bets.

(c) A license as an agent to sell lottery tickets, chances, or wagers and bets may not be issued to any person to engage in business exclusively as a lottery ticket, chance, or sports wagering sales agent.

(d) A license as an agent to sell wagers or bets may not be issued to any professional or collegiate sports:

(i) athlete;

(ii) coach;

(iii) assistant coach;

(iv) team staff;

(v) team owner;

(vi) referee; or

(vii) employee.

(4) The director may issue temporary licenses upon conditions that the director considers necessary.

(5) (a) Two license types are available:

(i) lottery only; and

(ii) sports wagering only.

(b) License applicants shall complete the application process pursuant to this chapter and corresponding administrative rules.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display the license or a copy of the license conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a sales agent may not be required to sell lottery game tickets, chances, or wagers or bets if the sale is against the employee's religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return and no more than 10% of the face value of a wager or bet. However, to further the sale of lottery products and sports wagering, the state lottery and sports wagering commission may*,* ~~adopt rules providing~~ *under 23-7-202(11), establish policies that provide* additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing the agent's sales and provide it for inspection upon request of the commission, the director, the department of administration, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

**Section 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 policies prescribed by the state lottery and sports wagering commission concerning sports wagering sales agents' commissions on or after January 15, 2022.

Approved February 23, 2023

# CHAPTER NO. 16

[SB 80]

AUTHORIZING THE DEPARTMENT OF COMMERCE TO RETAIN INTEREST EARNED ON THE GAP FINANCING PROGRAM ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Gap financing program -- interest and investment.** The gap financing program account consists of money deposited in the account from an appropriation in Chapter 400, Laws of 2015, and money from any other source. Any interest earned by the account must be deposited in the account and used to sustain the program.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [section 1].

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

Approved February 23, 2023

# CHAPTER NO. 17

[SB 45]

AN ACT GENERALLY REVISING THE STATE PLAN ON AGING LAWS TO UPDATE TERMINOLOGY AND REQUIREMENTS GOVERNING THE DESIGNATION OF PLANNING AND SERVICE AREAS; AMENDING SECTIONS 52-1-103, 52-3-401, 52-3-402, 52-3-405, AND 52-3-410, MCA; REPEALING SECTION 52-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the Interstate Compact for the Placement of Children;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and

(b) administer elder abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to ~~the aged~~ *older adults*;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, for administration of child and adult protection services for each county; and

(14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

**Section 2.** Section 52-3-401, MCA, is amended to read:

"**52-3-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to ~~the aged~~ *older adults*" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act."

**Section 3.** Section 52-3-402, MCA, is amended to read:

"**52-3-402. Purpose.** The purpose of this part is to grant the department authority to develop and administer the state plan on aging, to coordinate services to ~~the aged~~ *older adults* pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated."

**Section 4.** Section 52-3-405, MCA, is amended to read:

"**52-3-405. Designation of planning and service areas.** (1) On or before October 1, 1983, and every 4 years following, the department shall redesignate the planning and service areas it utilizes for services to ~~the aged~~ *older adults*.

(2) The department shall fix the number of planning and service areas at no less than 7 and no more than ~~12~~ *10*.

(3) Planning and service areas ~~shall~~ *must* follow ~~either~~ recognized county boundaries ~~or Indian reservation boundaries, or both~~ *and include Indian reservations located within the designated planning and service area*.

~~(4) The department may designate a combination of Indian reservations as a planning and service area for any reservations that have applied to be designated under a consortium supported by their respective tribal governments.~~"

**Section 5.** Section 52-3-410, MCA, is amended to read:

"**52-3-410. Achieving accountability.** (1) The department shall achieve accountability in providing quality services in a cost-effective manner by:

(a) establishing goals, responsibilities, and performance expectations for goals in providing services to ~~the aged~~ *older adults* and to older Montanans as provided in Title 52, chapter 3, parts 1, 4, and 5;

(b) requiring periodic reporting of performance or progress toward stated goals by departmental programs for aging services and area agencies on aging;

(c) establishing a continual process for the evaluation of all functions, the review of the evaluations, and the followup required to correct any deficiencies; and

(d) providing for feedback on the accountability process.

(2) The department shall adopt rules only as necessary to implement the goals, responsibilities, performance expectations, reporting periods, and evaluation process to be followed."

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

52-3-403. Existing planning and service areas grandfathered -- exception.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved February 23, 2023

# CHAPTER NO. 18

[SB 62]

AN ACT RESTRICTING ACCESS TO INCOME AND EXPENSE INFORMATION PROVIDED TO THE DEPARTMENT OF REVENUE FOR PROPERTY TAX PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Restricted access to income and expense information submitted to department for property tax purposes.** All income and expense information furnished by a property owner or a property owner's agent to the department for property tax purposes, including but not limited to the department performing an income approach to valuation or determining a property owner's income as disclosed in an application for a property tax assistance program provided for in Title 15, chapter 6, part 3, is confidential and must be treated as provided in 15-30-2618 and 15-31-511.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 8, part 1, and the provisions of Title 15, chapter 8, 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 income and expense information furnished by a property owner or a property owner's agent on or after [the effective date of this act].

Approved February 23, 2023

# CHAPTER NO. 19

[HB 24]

AN ACT REVISING THE REVENUE INTERIM COMMITTEE'S INCOME TAX CREDIT REVIEW SCHEDULE; AND AMENDING SECTION 15-30-2303, MCA.

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

**Section 1.** Section 15-30-2303, MCA, is amended to read:

"**15-30-2303. Tax credits subject to review by interim committee.** ~~(1) The following tax credits must be reviewed during the biennium commencing July 1, 2019, and during each biennium commencing 10 years thereafter:~~

~~(a) the credit for contractor's gross receipts provided for in 15-50-207; and~~

~~(b) the credit for elderly homeowners and renters provided for in 15-30-2337 through 15-30-2341.~~

~~(2)~~*(1)* The following tax credits must be reviewed during the biennium commencing July 1, 2021, and during each biennium commencing ~~10~~ *8* years thereafter:

(a) the credit for donations to ~~an educational improvement account~~ *innovative educational programs* provided for in 15-30-2334, 15-30-3110, and 15-31-158; and

(b) the credit for donations to a student scholarship organization provided for in 15-30-2335, 15-30-3111, and 15-31-159.

~~(3)~~*(2)* The following tax credits must be reviewed during the biennium commencing July 1, 2023, and during each biennium commencing ~~10~~ *8* years thereafter:

(a) the credit for infrastructure use fees provided for in 17-6-316;

(b) the credit for contributions to a qualified endowment provided for in 15-30-2327 through 15-30-2329, 15-31-161, and 15-31-162; ~~and~~

(c) the credit for property to recycle or manufacture using recycled material provided for in Title 15, chapter 32, part 6*; and*

*(d) the credit for preservation of historic buildings provided for in 15-30-2342 and 15-31-151.*

~~(4)~~*(3)* The following tax credits must be reviewed during the biennium commencing July 1, 2025, and during each biennium commencing ~~10~~ *8* years thereafter:

~~(a) the credit for preservation of historic buildings provided for in 15-30-2342 and 15-31-151;~~

*(a) the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;*

(b) the credit for unlocking state lands provided for in 15-30-2380;

(c) the job growth incentive tax credit provided for in 15-30-2361 and 15-31-175; and

(d) the credit for trades education and training provided for in 15-30-2359 and 15-31-174.

~~(5)~~*(4)* The following tax credits must be reviewed during the biennium commencing July 1, 2027, and during each biennium commencing ~~10~~ *8* years thereafter:

(a) the credit for hiring a registered apprentice or veteran apprentice provided for in 15-30-2357 and 15-31-173;

(b) the earned income tax credit provided for in 15-30-2318; ~~and~~

(c) the media production and postproduction credits provided for in 15-31-1007 and 15-31-1009*; and*

*(d) the credit for contractor's gross receipts provided for in 15-50-207.*

~~(6)~~*(5)* The revenue interim committee shall review the tax credits scheduled for review and make recommendations in accordance with 5-11-210 at the conclusion of the full review to the legislature about whether to eliminate or revise the credits. The committee shall also review any tax credit with an expiration date or termination date that is not listed in this section in the biennium before the credit is scheduled to expire or terminate.

~~(7)~~*(6)* The revenue interim committee shall review the credits using the following criteria:

(a) whether the credit changes taxpayer decisions, including whether the credit rewards decisions that may have been made regardless of the existence of the tax credit;

(b) to what extent the credit benefits some taxpayers at the expense of other taxpayers;

(c) whether the credit has out-of-state beneficiaries;

(d) the timing of costs and benefits of the credit and how long the credit is effective;

(e) any adverse impacts of the credit or its elimination and whether the benefits of continuance or elimination outweigh adverse impacts; and

(f) the extent to which benefits of the credit affect the larger economy. (Subsection ~~(4)(d)~~ *(3)(d)* terminates December 31, 2026--sec. 7, Ch. 248, L. 2021; subsection ~~(4)(c)~~ *(3)(c)* terminates December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

Approved February 28, 2023

# CHAPTER NO. 20

[HB 59]

AN ACT REVISING LAWS RELATED TO FUNDING FOR THE LIVESTOCK LOSS BOARD AND THE DEPARTMENT OF LIVESTOCK; DELAYING TERMINATION OF THE FUNDING OF PROGRAMS CONTINGENCY; DELAYING TERMINATION OF THE STATUTORY APPROPRIATION OF FUNDS IN THE LIVESTOCK LOSS MITIGATION RESTRICTED ACCOUNT; DELAYING TERMINATION OF THE STATUTORY APPROPRIATION OF FUNDS IN THE LIVESTOCK LOSS REDUCTION RESTRICTED ACCOUNT; DELAYING TERMINATION OF THE STATUTORY APPROPRIATION OF FUNDS IN THE PREDATORY ANIMAL SPECIAL REVENUE ACCOUNT; AMENDING SECTION 13, CHAPTER 339, LAWS OF 2011, SECTION 5, CHAPTER 284, LAWS OF 2017, AND SECTION 8, CHAPTER 284, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13, Chapter 339, Laws of 2011, is amended to read:

**"Section 13. Termination.** [Sections 1(3), 2(3), and 7] terminate June 30, ~~2017~~ *2029*."

**Section 2.** Section 5, Chapter 284, Laws of 2017, is amended to read:

**"Section 5.** Section 13, Chapter 339, Laws of 2011, is amended to read:

**"Section 13. Termination.** [Sections 1(3), 2(3), and 7] terminate June 30, ~~2017~~ ~~*2023*~~ *2029*.""

**Section 3.** Section 8, Chapter 284, Laws of 2017, is amended to read:

**"Section 8. Termination.** [This act] terminates June 30, ~~2023~~ *2029*."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 28, 2023

# CHAPTER NO. 21

[HB 98]

AN ACT REVISING AIRPORT ALCOHOLIC BEVERAGES LICENSES RELATING TO PREMISES SUITABILITY; REVISING REQUIREMENTS FOR AIRPORT ALCOHOL LICENSES; REQUIRING SAFEGUARDS; AMENDING SECTION 16-3-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-3-311, MCA, is amended to read:

"**16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The licensed retailer must demonstrate that it has adequate control over all alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are actually or apparently intoxicated. Except as provided in ~~subsection~~ *subsections* (8) *and (10)*, the premises must be separated from the rest of the building by permanent walls but may have inside access to the rest of the building at all times even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served. If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access.

(b) A resort retail all-beverages licensee or a retail all-beverages licensee within the boundaries of a resort area may also utilize an alternate alcoholic beverage storage facility as allowed in 16-4-213(8).

(2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the proposed alteration for the licensed premises to the department within 7 days of beginning the alteration. Department approval may not be unreasonably withheld. If the completed alteration differs from the approved alteration due to modifications required for approval by other state or local government entities, such as compliance with fire or building codes, the department must be notified, but preapproval is not required for these modifications. An alteration for the purposes of this section is any structural change in a premises that does not increase the square footage of the existing approved premises. An alteration that increases the square footage of the existing approved premises must be approved by the department prior to beginning the alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

(3) The interior portion of the licensed premises must be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control, and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building, including but not limited to entryways, hallways, stairwells, and elevators.

(4) The premises may include one or more exterior patios or decks as long as sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional perimeter barrier may not

be required if an existing boundary naturally defines the outdoor service area and impedes foot traffic.

(5) Premises suitability does not include a minimum number of seats.

(6) A licensed retailer may apply to the department to have a noncontiguous storage area that is under the control of the licensed retailer approved for onsite alcoholic beverage storage separate from its service area as long as the licensed retailer demonstrates that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access. The application fee is $100.

(7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent underage service. The application fee is $100.

(8) An on-premises consumption retailer may be located adjacent to a brewery or winery if the licensees are able to maintain control of their respective premises through adequate physical separation.

(9) (a) For the purposes of this section, "adequate physical separation" means:

(i) the premises of the retailer and the premises of the brewery or winery are secured after business hours from each other and from any other business, including but not limited to prohibiting a customer from accessing a brewery sample room and purchasing alcohol after the brewery tasting room hours of operation as specified in 16-3-213(2)(b); and

(ii) the separation may include doors, gates, or windows that may be left open during business hours.

(b) The term does not require permanent floor-to-ceiling walls.

*(10) A public airport all-beverages licensee, licensed pursuant to 16-4-208, or the Yellowstone airport beer and wine licensee, licensed pursuant to 16-4-304, may use the airport terminal or part of the terminal as premises licensed for the on-premises consumption of alcoholic beverages without regard to other businesses or uses in the terminal. The airport licensee must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access.*"

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

Approved February 28, 2023

# CHAPTER NO. 22

[HB 99]

AN ACT REMOVING A REFERENCE TO A REPEALED NONRESIDENT SNOWMOBILE PERMIT; AMENDING SECTION 23-2-614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 23-2-614, MCA, is amended to read:

"**23-2-614. Exemptions.** (1) (a) The provisions of this part with respect to registration, registration decals, certificates of title, certificates of ownership,

and ~~snowmobile~~ *winter* trail passes do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of this part.

(2) The provisions of this part with respect to registration, registration decals, certificates of title, certificates of ownership, and ~~snowmobile~~ *winter* trail passes do not apply to unregistered snowmobiles owned by nonresidents of Montana who ~~either:~~

~~(a) display visual proof that a nonresident temporary-use snowmobile permit has been purchased; or~~

~~(b)~~ use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

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

Approved February 28, 2023

# CHAPTER NO. 23

[HB 138]

AN ACT GENERALLY REVISING THE BANK ACT; ABOLISHING THE STATE BANKING BOARD; PROVIDING FOR THE CHARTERING OF STATE CHARTERED BANKS BY THE DEPARTMENT AND THE COMMISSIONER OF BANKING; ALLOWING RULEMAKING ON IMPLEMENTING THE PROCESS FOR NEW CHARTERS; CLARIFYING THE APPLICATION OF GENERAL CORPORATE LAW TO THE BANK ACT; ALLOWING RULEMAKING FOR THE APPROVAL OF A SHELL BANK; REQUIRING APPROVAL FOR LOAN PRODUCTION OFFICES; REQUIRING AN ANNUAL REPORT OF OFFICERS AND DIRECTORS; REQUIRING AN ANNUAL REPORT OF SERVICE AND TECHNOLOGY PROVIDERS; REQUIRING INCIDENT REPORTING; REMOVING CALL REPORTS FROM THE CONFIDENTIALITY SECTION; ALLOWING BANKS TO HAVE TREASURERS OR CASHIERS; ALLOWING OUT-OF-STATE STATE-CHARTERED BANKS TO USE THE WORD BANK UNDER CERTAIN CIRCUMSTANCES; ALLOWING BANKS TO PAY DIVIDENDS UNDER CERTAIN CIRCUMSTANCES; AMENDING EMERGENCY CLOSURE PROVISIONS; SIMPLIFYING THE EMERGENCY CLOSURE PROCESS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-1651, 32-1-109, 32-1-112, 32-1-211, 32-1-222, 32-1-233, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-325, 32-1-372, 32-1-402, 32-1-403, 32-1-426, 32-1-427, 32-1-452, 32-1-561, 32-1-563, AND 32-1-564, MCA; REPEALING SECTIONS 2-15-1025, 32-1-201, 32-1-202, 32-1-203, 32-1-204, 32-1-205, 32-1-206, 32-1-303, 32-1-801, 32-1-802, 32-1-803, 32-1-804, 32-1-805, 32-1-806, 32-1-807, AND 32-1-808, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Application to organize bank -- rulemaking.** (1) Any five or more individuals, at least three of whom are residents of the state, may file an application to incorporate a proposed bank. The application must be in the form and contain the information prescribed by the department by

rule. A nonrefundable application fee, as set by the department by rule, must accompany the application.

(2) The information must be set forth in the application in sufficient detail to allow the commissioner to determine if the proposed new bank meets the requirements set forth in [sections 3 and 5].

(3) The department shall adopt rules to implement [sections 1 through 6].

**Section 2. Authority to require additional investigatory information -- fingerprinting.** (1) The department may investigate any person named in the application or in other documents submitted for filing. The department may require the person to provide additional information for the department's further inquiry.

(2) For the purpose of further inquiry, the department may require any of the following individuals to submit fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check:

(a) any individual required to be named in the application to organize; and

(b) any individual named in the proposed articles of incorporation of the bank or documents submitted for filing as a prospective incorporator, director, president, or officer of the bank.

**Section 3. Department to review application.** (1) The department shall ensure that sufficient information has been submitted to allow the commissioner to determine whether:

(a) the purposes of the proposed bank as stated in the proposed bank's business plan, articles of incorporation, and the application are consistent with the Bank Act;

(b) the character, financial responsibility, and general fitness of the owners and managers of the proposed bank command the confidence of the community in which the proposed bank is to be located and warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;

(c) the proposed directors and officers are competent to successfully manage a bank;

(d) there is a reasonable assurance of sufficient volume of business for the proposed bank to be economically viable;

(e) the suggested capitalization is adequate for the proposed banking institution's anticipated development and growth within a reasonable period of time;

(f) there is a reasonable public necessity and demand for a new bank at the proposed location or in the area in which the proposed new bank will operate;

(g) the corporate name assumed by the proposed bank, by reason of the use of any one or more of the words "bank", "banker", "banking", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion; and

(h) anything else is considered pertinent.

(2) The department may define the standards in subsection (1) by rule.

(3) The department may request additional information as needed to allow an assessment of the standards in [section 5] and this section.

(4) An applicant may withdraw an application at any time before the department determines the application is complete.

**Section 4. Commissioner grants or denies application.** (1) When the department determines an application to organize a new bank is complete, the department shall notify the applicant and submit the completed application to the commissioner for a decision.

(2) The commissioner shall review all the submitted materials and the results of the investigation and determine if a preponderance of the evidence shows the standards in [sections 3 and 5] and the rules adopted pursuant to [sections 3 and 5] have been met. The commissioner may further investigate the applicant, materials, application, and any other factors the commissioner considers relevant.

(3) If the commissioner approves the application, the commissioner shall determine the amount needed for initial capitalization of the institution based on the business plan and application of the proposed institution.

(4) The commissioner shall approve or deny the application within 60 days from receipt of the application unless the commissioner requests more information. If more information is requested, the commissioner shall act within 30 days of the date the additional information has been fully provided.

(5) The commissioner may grant conditional approval of an application and require the applicant to make additional showing or changes in the proposed bank as the commissioner considers advisable.

(6) The applicant may request a hearing on the decision of the commissioner as provided in Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

**Section 5. Grounds for refusing application to organize.** The commissioner may disapprove an application on a finding that any person named in the application to organize or in other documents submitted for filing:

(1) is insolvent, either in the sense that the person's liabilities exceeded the person's assets or that the person cannot meet the person's obligations as they mature, or is in a financial condition in which the person cannot continue in business with safety to the person's customers;

(2) has engaged in dishonest, fraudulent, or illegal practices or conduct in any business or profession;

(3) has willfully or repeatedly violated or failed to comply with any provisions of the Bank Act or any rule or order of the commissioner;

(4) has been convicted of any felony or a misdemeanor, if an essential element of the crime is fraud or dishonesty;

(5) is not qualified to conduct a banking business on the basis of factors such as training, experience, and knowledge of the business;

(6) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the banking business or other business that may lawfully be conducted by an insured institution;

(7) is the subject of an order of the commissioner subjecting the person to a civil penalty or removing the person from an office in any entity regulated by the commissioner; or

(8) is the subject of an order directing the person to cease and desist from any fraudulent or unlawful business or banking practice, subjecting the person to a civil penalty, or removing the person from an office in a financial institution or a consumer finance company issued by a state, the comptroller of the currency, the board of governors of the federal reserve system, or any other agency of the federal government or another state with regulatory authority over financial institutions or consumer finance companies.

**Section 6. Additional requirements after approval of application.** Following approval of the application, the incorporators must:

(1) file a signed original of the articles of incorporation with the department for filing with the secretary of state and pay the filing fee;

(2) provide acceptable proof that the capital of the institution has been placed into escrow;

(3) if the bank will accept money on deposit, prove that the bank has federal deposit insurance corporation insurance, or provide satisfactory assurance from the federal deposit insurance corporation that the proposed bank will be accepted for insurance when the applicants comply with certain stated minor requirements imposed by the federal deposit insurance corporation. "Minor requirements" must be of a type and character that the commissioner determines can be promptly complied with by the applicants without serious difficulty.

(4) provide proposed bylaws that comply with Montana law to the department for review and approval.

**Section 7. Shell bank.** The department shall adopt rules providing an application process, processing times, requirements, fees, and criteria for the approval of a shell bank.

**Section 8.** Section 17-5-1651, MCA, is amended to read:

"**17-5-1651. Limitations on board's power.** Under this part, the board may not:

(1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of ~~the state banking board,~~ the department of administration~~,~~ or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state."

**Section 9.** Section 32-1-109, MCA, is amended to read:

"**32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

(2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock.

(3) "Affiliate" has the meaning given in 12 U.S.C. 1841(k).

(4) "Bank holding company" means a bank holding company or a financial holding company registered under the federal Bank Holding Company Act of 1956, as amended, regardless of where the entity is located or has its headquarters.

~~(5) "Board" means the state banking board provided for in 2-15-1025.~~

~~(6)~~*(5)* "Branch" means:

(a) in the case of a bank, a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent. The term does not include a satellite terminal, as defined in 32-6-103, a loan production office, or the office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828.

(b) in the case of a trust company, any office at which trust services are provided.

~~(7)~~*(6)* "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

~~(8)~~*(7)* "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

~~(9)~~*(8)* "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

~~(10)~~*(9)* "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(11)~~*(10)* "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(12)~~*(11)* "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

~~(13)~~*(12)* "Division" means the division of banking and financial institutions of the department.

~~(14)~~*(13)* "Doing business in this state" means located in this state or having a physical branch bank location in this state.

~~(15)~~*(14)* "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are principally conducted within the meaning of the federal Bank Holding Company Act of 1956, as amended.

~~(16)~~*(15)* "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

~~(17)~~*(16)* "Loan production office" means a staffed facility, other than a branch, that provides lending-related services to the public, including loan information and applications.

~~(18)~~*(17)* "Located in this state" means:

(a) in the case of a bank, that the bank is either organized under the laws of this state or is a federally chartered bank whose organizational certificate identifies an address in this state as the principal place at which the business of the federally chartered bank is conducted; and

(b) in the case of a bank holding company, that the entity, partnership, or trust is organized under the laws of this state.

~~(19)~~*(18)* "Main banking house" means the designated principal place of business of a bank.

~~(20)~~*(19)* "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

~~(21)~~*(20)* "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(22)~~*(21)* "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

~~(23)~~*(22)* "Regional banking organization" means a bank organized in this state that is owned by an entity with consolidated total assets between $10 billion and $50 billion and that has subsidiaries operating in one or more states but not nationwide.

~~(24)~~*(23)* "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

~~(25) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.~~

~~(26)~~*(24)* (a) "Service provider" means an individual or person that provides one or more of the following services to a depository institution:

(i) data processing services;

(ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary activities, trading activities, and deposit taking;

(iii) internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and

(iv) activities related to the business of banking.

(b) The term does not include:

(i) an individual or person that provides telecommunications service, internet access service, internet transport services, voice over internet protocol service, or other internet protocol-enabled service; or

(ii) a general audience internet or communications platform.

*(25) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.*

~~(27)~~*(26)* "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

~~(28)~~*(27)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

~~(29)~~*(28)* "Tier 1 leverage ratio" means the ratio of tier 1 capital to average total assets as defined in ~~12 CFR 628.10(c)(4)~~ *12 CFR 324.10(b)(4)*.

~~(30)~~*(29)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(31)~~*(30)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

**Section 10.** Section 32-1-112, MCA, is amended to read:

"**32-1-112. Applicability of corporation law.** (1) Except as provided in subsection (2), the provisions of Title 35, chapter 14, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 14.

(2) The provisions of 35-14-301, 35-14-302(4) through (10), 35-14-401(1), 35-14-621(2), Title 35, chapter 14, part 14, *and* 35-14-1601~~, and 35-14-1602~~ do not apply to banks."

**Section 11.** Section 32-1-211, MCA, is amended to read:

"**32-1-211. Examination and supervision by department -- division of banking and financial institutions -- commissioner -- rulemaking.** (1) The department shall:

(a) exercise constant supervision over the books and affairs of all banks and trust companies doing business in this state; and

(b) investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(2) Except as provided in subsection (3), the department shall:

(a) examine, at least once every 24 months, each bank or trust company and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank or trust company a report of the examination's findings no later than 60 days after the completion of the examination.

(3) The department may accept as the examination required by subsection (2) the findings or results of an examination of a bank, trust company, or service provider that was made by a federal or a state regulatory agency or insuring agency of the United States authorized to make the examination.

(4) Whenever a depository institution or its subsidiary or the depository institution's affiliate, any of which is subject to examination by the department, causes any of the services listed for a service provider in 32-1-109 to be performed for itself, by contract or otherwise, the performance is subject to regulation and examination by the department to the same extent as if the services were performed by the depository institution itself.

(5) The department may:

(a) enter into joint examination or joint enforcement actions with other bank regulatory agencies having concurrent jurisdiction over a bank, trust company, or service provider;

(b) enter into agreements with any depository institution regulatory agency that has concurrent jurisdiction over a bank, trust company, or service provider to:

(i) engage the services of the agency's examiners at a reasonable rate of compensation; or

(ii) provide the services of the department's examiners to the agency at a reasonable rate of compensation;

(c) disclose to a bank information about a service provider of that bank.

(6) The department may in the performance of its official enforcement duties:

(a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank or trust company regarding the affairs and business of the bank or trust company; and

(b) issue subpoenas and administer oaths.

(7) In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the bank or trust company is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(8) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(9) All officers, directors, agents, and employees of banks or trust companies doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust company shall:

(a) at all times afford reasonable facilities for the examinations;

(b) make returns and reports to the department as required by the department;

(c) attend hearings and answer under oath the department's inquiries;

(d) produce and exhibit any books, accounts, documents, and property the department desires to inspect; and

(e) in all things aid the department in the performance of its duty.

(10) There is within the department a division of banking and financial institutions. The head of the division is the commissioner of banking and financial institutions, who shall exercise supervision and control over the activities and employees of the division. The position of commissioner is an exempt position as provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. ~~The director may consult with the board in hiring or terminating the commissioner.~~

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

**Section 12.** Section 32-1-222, MCA, is amended to read:

"**32-1-222. Loan production office -- rulemaking authority.** (1) A bank may:

(a) establish and maintain a loan production office only after ~~giving notice~~ *approval by* ~~to~~ the department; or

(b) relocate or close a loan production office after giving notice to its customers and the department.

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

**Section 13.** Section 32-1-233, MCA, is amended to read:

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

*(2) Each bank shall file a report of service and technology providers containing the information as set forth by the department by rule by July 31 of each year.*

*(3) A bank shall report an incident that allowed unauthorized access to customer data or interruption of customer services to the department immediately following discovery and without unreasonable delay.*"

**Section 14.** Section 32-1-234, MCA, is amended to read:

"**32-1-234. Confidentiality -- penalties.** (1) (a) Reports and statements under 32-1-211, 32-1-215, 32-1-216, 32-1-221, ~~32-1-231,~~ 32-1-232, and 32-1-233 are confidential. Except for information made public by the federal deposit insurance corporation or other federal banking authority's publicly accessible website, any information contained in the reports and statements, the source documents from which this information is derived, and communications concerning reports and statements are confidential. Except as provided in subsection (1)(b), confidential information may not be disclosed to persons who are not officially associated with the department and may be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish reports of its examination findings under 32-1-211, 32-1-215, and 32-1-216 to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed

to any person not officially associated with the department. The information must be used by the department only to further its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank must be removed from office and is also guilty of a felony. ~~Upon~~ *On* conviction, the person shall be fined an amount not exceeding $1,000, imprisoned in a state correctional facility for a term not exceeding 5 years, or both."

**Section 15.** Section 32-1-301, MCA, is amended to read:

"**32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, ~~upon~~ *on* approval by the department, *the department* may file the articles with the secretary of state as provided in Title 35, chapter 14. The articles of incorporation must set forth:

(a) the information required by 35-14-202(1);

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed ~~upon~~ *on* for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-14-202(2).

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with 35-14-401(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the ~~board~~ *department* authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

**Section 16.** Section 32-1-302, MCA, is amended to read:

"**32-1-302. Incorporation.** (1) The proposed articles of incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(2) ~~Upon~~ *On* the presentation of the proposed articles of incorporation, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. The department shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. The department shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more

of the words ~~"commercial"~~ *"bank", "banker", "banking"*, "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department ~~and the board~~ incurred in the examinations and ~~hearings~~ *investigations* provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee ~~which~~ *that* must be determined by the ~~board~~ *department* by rule.

~~(4) All information gathered by the department under this section must be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.~~"

**Section 17.** Section 32-1-307, MCA, is amended to read:

"**32-1-307. Amount of capital.** The ~~division, in consultation with the board,~~ *commissioner* shall determine the appropriate level of capitalization of the proposed corporation prior to the issuance of the certificate of authorization."

**Section 18.** Section 32-1-325, MCA, is amended to read:

"**32-1-325. Selection of officers and employees -- minutes of meetings.** (1) The board of directors of a bank ~~must~~ *shall* hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier *or treasurer*, one or more assistant cashiers *or treasurers*, and other officers and employees that they may from time to time consider to be to the best interest of the bank and fix their compensation. The president must be chosen from the board of directors. *Each bank shall file a list of the officers and directors of the bank with the department by July 31 of each year.*

(3) The board of directors shall keep a correct report of the meetings of the board and of the stockholders. The minutes must disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors must be signed, manually or electronically, by the presiding officer and the person responsible for preparing the minutes. The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact. The minutes must be available in the main office of the bank at all times and must be available to the department at the time of its examination of the books. A person who makes a material false entry in the record of the board meetings or who makes a material change or alteration of an entry made in the record is subject to removal pursuant to 32-1-468."

**Section 19.** Section 32-1-372, MCA, is amended to read:

"**32-1-372. Branch bank.** (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. The formation and operation of a branch bank in this state by a bank organized under the laws of this state require the prior approval of the department. A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department ~~or the board~~.

All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(6) With the prior approval of the appropriate federal regulator and state chartering authority, a bank that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a bank organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.

(7) A bank that is not organized under the laws of this state that applies to the appropriate federal regulator and state chartering authority under subsection (6) to establish and operate a de novo interstate branch in Montana shall simultaneously file a copy of the application with the department for notification purposes.

(8) A bank shall notify the department and its customers of any branch bank closure or relocation.

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

**Section 20.** Section 32-1-402, MCA, is amended to read:

"**32-1-402. When advertising as bank prohibited -- trade names restricted.** (1) Except as provided in subsection ~~(4)~~ *(3)*, a person, ~~firm, company, partnership, or corporation, either~~ domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) except for a student financial institution, as defined in 32-1-115, advertise that the person ~~or entity~~ is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit; or

(b) ~~use an office~~ *advertise a* sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, ~~firm, company, partnership, or corporation,~~ domestic or foreign, may not use ~~or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company~~ *any sign, logo, or marketing message, in any media, or use any written, printed, electronic, or internet-based instrument or material representation whatever directly or indirectly indicating that the business of the person is that of a bank, savings bank, or trust or investment company*.

~~(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, or trust or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, or trust or investment company.~~

~~(4)~~*(3)* (a) ~~A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from~~

~~the department a certificate to do a banking business may not~~ *A Montana state-chartered bank or an out-of-state state-chartered bank that seeks to* transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust company", or "investment company" ~~unless the department has granted a waiver~~ *may do so only on the approval of the department*. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection ~~(4)(a)~~ *(3)(a)* to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

~~(5)~~*(4)* A person, ~~firm, company, partnership, or corporation,~~ domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

~~(6)~~*(5)* ~~Upon~~ *On* suit by the department, the court may issue an injunction restraining the person~~, firm, company, partnership, or corporation~~ during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a bank, savings bank, or trust or investment company and may enter any other order or decree as equity and justice require."

**Section 21.** Section 32-1-403, MCA, is amended to read:

"**32-1-403. Penalty for transacting business without certificate.** ~~(1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that the person or entity is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that the person or entity is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.~~

~~(2)~~*(1)* A person, ~~firm, company, partnership, or corporation,~~ domestic or foreign, violating any provision of this section shall forfeit to the state ~~$100~~ *$500* a day for every day or part of a day during which the violation continues.

~~(3)~~*(2)* ~~Upon~~ *On* action brought by the department, the court may issue an injunction restraining a person~~, firm, company, partnership, or corporation~~ from further violating any provision of this section and may enter a further order or decree as equity and justice require.

~~(4)~~*(3)* A person~~, firm, company, partnership, or corporation~~ doing any of the things or transacting any of the business defined in ~~this section~~ *Title 32, chapter 1,* shall transact that business according to the provisions of the Bank

Act, and the department may examine the accounts, books, papers, cash, and credits of that person, ~~firm, company, partnership, or corporation,~~ domestic or foreign, in order to ascertain whether that person~~, firm, company, partnership, or corporation~~ has violated or is violating any provisions of this section."

**Section 22.** Section 32-1-426, MCA, is amended to read:

"**32-1-426. Deposit of securities in central depository.** (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-112. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary must ~~at all times~~ show *at all times* the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company depositing securities pursuant to this section is subject to rules, which in the case of state-chartered institutions, the ~~state banking board~~ *department* and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section applies to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation."

**Section 23.** Section 32-1-427, MCA, is amended to read:

"**32-1-427. Fiduciaries -- deposit of securities with a federal reserve bank.** (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality ~~thereof~~ *of the United States* has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company ~~so~~ depositing securities with a federal reserve bank ~~shall~~ *must* be subject to ~~such~~ *these* rules with respect to the making and maintenance of ~~such~~ *the* deposit as, in the case of state-chartered institutions, the ~~state banking board~~

*department* and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company ~~shall~~ *must* at all times show the ownership of the securities held in ~~such~~ *the* account. Ownership of and other interests in the securities credited to ~~such~~ *the* account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of ~~such~~ *the* fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as ~~such~~ *the* fiduciary.

(2) This section ~~shall~~ *must* apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who ~~thereafter~~ may act *afterward* regardless of the date of the instrument or court order by which they are appointed."

**Section 24.** Section 32-1-452, MCA, is amended to read:

"**32-1-452. Dividends, surplus, losses, and bad debts.** (1) The directors of a bank may, at certain times and in the manner as the bank's bylaws prescribe, ~~declare~~ *declare,* and pay dividends to the stockholders of so much of the net undivided profits of the bank as may be appropriated for that purpose, but every bank shall, before declaring any dividend, carry at least 25% of the bank's net earnings for the period covered by the dividend to the bank's surplus, until the surplus is 50% of the bank's paid-up capital stock. The whole or any part of the surplus may at any time be converted into paid-in capital, but the surplus must be restored as provided in this subsection until the surplus amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created.

(2) A bank must receive prior approval from the department to pay a dividend if:

(a) the bank is rated lower than a 1 or a 2 using the uniform financial institutions rating system adopted by the federal financial institutions examination council; or

(b) the dividend would reduce the tier 1 leverage ratio below 8%*, or the bank has a tier 1 leverage ratio below 8% when the dividend is declared*.

(3) The department may require a bank to suspend the payment of any or all dividends until all requirements imposed in writing on the bank by the department have been met.

(4) Losses sustained by a bank in excess of the bank's undivided profits may be charged to and paid from the surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount required by this chapter."

**Section 25.** Section 32-1-561, MCA, is amended to read:

"**32-1-561. Definitions.** As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe ~~upon~~ *on* paramount federal law, also includes national banks.

(2) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

(a) fire;
(b) flood;
(c) earthquake;
(d) hurricanes;
(e) wind, rain, or snowstorms;
(f) labor disputes and strikes;
(g) power failures;
(h) transportation failures;
(i) interruption of communication *or internet* facilities;
(j) shortages of fuel, housing, food, transportation, or labor;
(k) robbery or attempted robbery;
(l) actual or threatened enemy attack;
(m) epidemics or other catastrophes;
(n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened*;*
*(o) cyberattacks or ransomware attacks*.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved."

**Section 26.** Section 32-1-563, MCA, is amended to read:

"**32-1-563. Powers of officers.** (1) When the officers of a bank are of the opinion that an emergency exists or is impending ~~which~~ *that* affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine ~~not~~ to *not* open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office ~~so~~ closed *as such* ~~shall~~ *must* remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. ~~However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.~~

(2) The officers of a bank may close any of the bank's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; ~~or~~

(b) that the federal reserve bank of Minneapolis is not open for business*; or*

*(c) with the permission of the department to commemorate or memorialize a special day, event, or individual*."

**Section 27.** Section 32-1-564, MCA, is amended to read:

"**32-1-564. Notice of bank closing.** *(1)* A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency. *The bank shall estimate the time the office will remain closed and notify the department when the office reopens.*

*(2) A bank that is unable to provide services by any means, including mobile applications, automatic teller machines, online or telephone transactions, or services at any mobile or temporary branch, shall immediately notify the department.*"

**Section 28. Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-1025. State banking board -- composition -- allocation.
32-1-201. State banking board -- secretary -- meetings -- per diem.
32-1-202. Powers and duties of board.
32-1-203. Rules adopted by board -- new banks.
32-1-204. Hearings -- notice.
32-1-205. Board rules for discovery and hearing procedures.
32-1-206. Disqualification of board member -- when.
32-1-303. Board to refuse or approve application.
32-1-801. Short title.
32-1-802. Definitions.
32-1-803. Organization of subsidiary trust companies.
32-1-804. Permissible business of subsidiary trust companies.
32-1-805. Trust offices of subsidiary trust companies.
32-1-806. Trust offices of affiliated banks.
32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.
32-1-808. Transfer of fiduciary relationships between affiliated banks.

**Section 29. Codification instruction.**[Sections 1 through 7] are intended to be codified as an integral part of Title 32, chapter 1, part 2, and the provisions of Title 32, chapter 1, part 2, apply to [sections 1 through 7].

**Section 30. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2023.

(2) [Sections 9, 20, and 24 through 27] and this section are effective on passage and approval.

Approved February 28, 2023

# CHAPTER NO. 24

[HB 139]

AN ACT REVISING LAWS RELATED TO MUTUAL ASSOCIATIONS; REQUIRING MUTUAL ASSOCIATION MEMBER APPROVAL OF A MUTUAL ASSOCIATION MERGER; AMENDING SECTION 32-2-827, 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 32-2-827, MCA, is amended to read:

"**32-2-827. Merger of mutual associations.** (1) (a) Any mutual association doing business in this state that has been in business for at least 5 years may, with the approval of the department if any merger party is a mutual association organized under the laws of this state, merge into one mutual association on terms and conditions lawfully agreed on by a majority of the board of directors of each mutual association proposing to merge. *After the directors agree to a plan of merger and the department approves the plan of merger, the majority of the members of the merging mutual association must approve the proposed merger.*

(b) Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is governed by Title 35, chapter ~~7~~ *14*, if the resulting mutual association is organized under the laws of this state.

(2) Upon merger:

(a) each mutual association merging party merges into the resulting mutual association and the separate existence of every merging party except the resulting mutual association ceases;

(b) title to all real, personal, and mixed property owned by each merging party is vested in the resulting mutual association without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting mutual association has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting mutual association has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other investment.

(3) Upon merger, the resulting mutual association shall designate and operate one of the prior main offices of the merging mutual associations as its main mutual association office and the resulting mutual association may maintain and continue to operate the main office of each of the other merging mutual associations as a branch.

(4) (a) Upon merger, the resulting mutual association may:

(i) maintain the branches and other offices previously maintained by the merging mutual associations; and

(ii) establish, acquire, or operate additional branches of mutual associations at any location where any mutual association involved in the merger could have established, acquired, or operated a branch under applicable federal or state law if that mutual association had not been a party to the merger.

(b) A resulting mutual association organized under the laws of this state that intends to establish, acquire, or operate a branch under subsection (4)(a)(ii) must receive prior approval from the department as provided for in 32-2-828, whether or not the branch is to be located within or outside this state."

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

**Section 3. Applicability.** [This act] applies to mutual association merger proceedings initiated after [the effective date of this act].

Approved February 28, 2023

# CHAPTER NO. 25

[HB 111]

AN ACT REVISING LAWS RELATED TO THE ASSIGNMENT OF PUBLIC DEFENDERS; AND AMENDING SECTION 47-1-104, MCA.

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

**Section 1.** Section 47-1-104, MCA, is amended to read:

"**47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region,

as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;~~

~~(iv)~~*(iii)* for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

~~(v)~~*(iv)* for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

~~(vi)~~*(v)* for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

~~(vii)~~*(vi)* 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; *and*

~~(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)~~*(vii)* for a witness in a criminal grand jury proceeding, as provided in 46-4-304~~.~~*;*

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(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~~

*(ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;*

*(x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and*

*(xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and*

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Approved March 2, 2023

# CHAPTER NO. 26

[HB 113]

AN ACT REPEALING THE REQUIREMENTS FOR LICENSING OF HUCKSTERS; REPEALING SECTIONS 7-21-2501, 7-21-2502, 7-21-2503, 7-21-2504, 7-21-2505, 7-21-2506, 7-21-2507, AND 7-21-2508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-21-2501. Definition of term huckster.
7-21-2502. Scope of part.
7-21-2503. License required to do business as huckster -- fee.
7-21-2504. Nontransferability of license.
7-21-2505. Application for huckster license.
7-21-2506. Processing of application -- issuance of license.
7-21-2507. License to be displayed upon demand.
7-21-2508. Effect of failure to comply with licensing requirements.

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

Approved March 2, 2023

# CHAPTER NO. 27

[HB 73]

AN ACT REPEALING SURETY BOND REQUIREMENTS FOR HUNTING AND FISHING LICENSE AGENTS; REPEALING SECTION 87-2-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following section of the Montana Code Annotated is repealed:

87-2-902. Bond or security of agent and preferred claim of state for license money.

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

Approved March 2, 2023

# CHAPTER NO. 28

[HB 71]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE TRANSFER OF LICENSES; ALLOWING THE DEPARTMENT TO GRANT TEMPORARY OPERATING AUTHORITY TO AN APPLICANT; ALLOWING FOR THE TRANSFER OF ALCOHOLIC BEVERAGE INVENTORY WITH A BONA FIDE SALE IF CERTAIN CONDITIONS HAVE BEEN MET; PROVIDING THAT THE TEMPORARY OPERATING AUTHORITY MAY NOT EXCEED 180 DAYS; PROVIDING ELIGIBILITY REQUIREMENTS; AMENDING SECTIONS 16-4-404, 16-4-416, 16-4-801, 16-6-303, AND 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Temporary operating authority.** (1) The department may grant temporary operating authority to an applicant for a license issued under this code for a period not to exceed 180 days. The department may not extend the period of temporary operating authority beyond 180 days and may not grant temporary operating authority more than once for the same application.

(2) To be eligible to obtain temporary operating authority, and in addition to application requirements established by the department, the following requirements must be met:

(a) the license applied for must be currently operated at the proposed premises and the premises must not have been altered from the last approved floor plan; or

(b) the applicant must be a current licensee in good standing.

(3) An applicant is eligible to exercise all of the privileges of the license if temporary operating authority is granted by the department.

(4) The department may refuse to grant temporary operating authority if the department believes that the applicant is not qualified to hold a license, the applicant's proposed premises are not suitable for the operation of the business, or the department has adverse information about the applicant or the applicant's owners, officers, or managers. The department may immediately revoke temporary operating authority if the applicant or applicant's employees violate any provision of this code or any rules adopted under it. The refusal to grant temporary operating authority is not a contested case under the Montana Administrative Procedure Act.

(5) The granting of temporary operating authority is not a temporary license or a permit. It does not guarantee that the department will grant the application if it finds that the applicant is not qualified to hold a license or the premises are not suitable for the operation of the business.

**Section 2.** Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited ~~upon~~ *on* request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) ~~(a)~~ A licensee may apply to the department for a transfer of the license to different premises within the quota area. ~~if:~~ *The department may, after notice and opportunity for protest, permit a transfer if the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207.*

~~(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;~~

~~(ii) the lease of the licensed premises has expired;~~

~~(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or~~

~~(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.~~

~~(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.~~

(6) ~~Upon~~ *On* a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate

under a supposedly transferred license prior to the approval of the transfer by the department, endorsed ~~upon~~ *on* the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. ~~The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.~~

(7) The alcoholic beverage inventory of an existing licensee may be transferred under the following scenarios:

*(a) on a bona fide sale of the business operated under a license when the department:*

*(i) has granted temporary operating authority to the buyer to operate the license; or*

*(ii) has approved transfer of the license to the buyer;*

*(b) on a license type change at an existing licensed premises when the department has granted temporary operating authority or approved the issuance of the new license, as long as the alcoholic beverage is allowed by the new license type;*

*(c) on approval of a corporate structure change at an existing licensed premises;*

*(d) on the sale of a license to be floated out of a quota area when the department has granted temporary operating authority or approved the license transfer; or*

*(e) when a licensee is going out of business but only if the unopened alcohol is in its original packaging and the licensee receiving the alcohol is licensed for that type of alcohol.*

~~(7)~~*(8)* Except as provided in 16-4-204 and subsections (2) through ~~(6)~~ *(7)* of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, ~~upon~~ *on* application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien ~~upon~~ *on* a license, but a subsequent licensee has the obligation to pay for the beer or wine."

**Section 3.** Section 16-4-416, MCA, is amended to read:

"**16-4-416. Ownership of ~~liquor~~ *alcoholic beverage* license by United States.** (1) Whenever right, title, and interest in ~~a liquor~~ *an alcoholic beverage* license vests in the United States, the United States shall promptly give notice to the department of its interest and ~~must~~ *shall* have the license placed on nonuse status. The United States shall transfer ownership of the license to a qualified applicant within ~~200~~ *180* days from the date on which it obtained an interest in the license. ~~Upon~~ *On* receipt of an application to transfer the license, the department may, pursuant to ~~16-4-404~~ *[section 1]*, grant the applicant temporary *operating* authority to operate the license.

(2) The department, ~~upon~~ *on* a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days."

**Section 4.** Section 16-4-801, MCA, is amended to read:

"**16-4-801. Security interest in ~~liquor~~ *alcoholic beverage* license -- definitions.** (1) (a) A security interest in ~~a liquor~~ *an alcoholic beverage* license is an interest in the ~~liquor~~ *alcoholic beverage* license that secures payment or performance of an obligation. A contract for the sale of ~~a liquor~~ *an alcoholic beverage* license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing

payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the ~~liquor~~ *alcoholic beverage* license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) ~~"liquor license"~~ *"alcoholic beverage"* means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of ~~a liquor~~ *an alcoholic beverage* license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on ~~nonuser~~ *nonuse* status. ~~Upon~~ *On* receipt of an application to transfer the license, the department may, pursuant to ~~16-4-404~~ *[section 1]*, grant the applicant temporary *operating* authority to operate the license. If the person holding the license places the license on ~~nonuser~~ *nonuse* status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary *operating* authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of ~~a liquor~~ *an alcoholic beverage* license under 16-4-401, the secured party shall transfer ownership of the ~~liquor~~ *alcoholic beverage* license within 180 days of the notice of the default of the licensee.

(c) The department, ~~upon~~ *on* a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

(4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in ~~a liquor~~ *an alcoholic beverage* license or in other assets of a business operating ~~a liquor~~ *an alcoholic beverage* license to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership interest in the ~~liquor~~ *alcoholic beverage* license or the licensee's business by a coborrower or guarantor if the department determines the borrower, coborrower, guarantor, and owner or

owners of the assets pledged as collateral meet the requirements of 16-4-401. As used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of ~~a liquor~~ *an alcoholic beverage* license to:

(i) be coborrowers of a borrower's loan;

(ii) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor; or

(iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan.

(b) A person claiming a security interest in ~~a liquor~~ *an alcoholic beverage* license may submit to the department copies of documents evidencing the security interest, the license number, and a $30 notification fee. The department shall deposit the fee as provided in 16-2-108. The department may create and provide a form to be used for this purpose.

(c) The department shall notify ~~by certified mail~~ those that have filed information provided in subsection (4)(b):

(i) at least 20 days prior to issuance of an order of default for revocation, nonrenewal, or lapse of a license; or

(ii) immediately after the department's office of dispute resolution has issued a decision to uphold the department's revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310.

(5) When a licensee is the borrower, an owner of the licensee may make a payment on the institutional loan. If a payment is made under this subsection (5):

(a) the party making the payment must be vetted and approved prior to making the payment;

(b) the licensee ~~must~~ *shall* notify the department within 90 days that the payment was made and designate whether the payment will be treated as a loan or an equity investment as follows:

(i) for a payment treated as a loan, the licensee ~~must~~ *shall* memorialize the loan by a written agreement, which must be provided to the department; or

(ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result, the licensee ~~must~~ *shall* follow department requirements for disclosing changes in ownership percentages; and

(c) the funds used for the payment must be the party's own funds or funds borrowed from an institutional lender.

(6) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the coborrower or guarantor may make a payment on the institutional loan, and the payment does not create an undisclosed ownership interest in the ~~liquor~~ *alcoholic beverage* license by the borrower, coborrower, or guarantor only if:

(a) the licensee notifies the department within 90 days that the payment was made;

(b) the payment is made as a loan that is memorialized by a written agreement; and

(c) the funds used for the payment are the coborrower's or guarantor's own funds or funds borrowed from an institutional lender.

(7) A regulated lender that obtains a security interest in ~~a liquor~~ *an alcoholic beverage* license or in other assets of a business operating ~~a liquor~~ *an alcoholic beverage* license has no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (5) or (6) in connection with loan or guaranty payments it may receive from the coborrower or guarantor.

(8) For the purposes of subsections (5) and (6), the term "borrower" means the party that is primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

**Section 5.** Section 16-6-303, MCA, is amended to read:

"**16-6-303. Sale of liquor not purchased *or transferred* from agency liquor store forbidden -- penalty.** It is unlawful for any licensee to sell or keep for sale or have on the licensee's premises for any purpose ~~whatever~~ any liquor except that purchased from an agency liquor store *or transferred as allowed in 16-4-404(7)*~~, and any~~. *Any* licensee found in possession of or selling and keeping for sale any liquor that was not purchased from an agency liquor store *or transferred as allowed in 16-4-404(7)* shall, upon conviction, be punished by a fine of not less than $500 or more than $1,500, by imprisonment for not less than 3 months or more than 1 year, or by both fine and imprisonment. If the department is satisfied that the liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by the licensee's agents, servants, or employees, the department shall immediately revoke the license."

**Section 6.** Section 23-5-119, MCA, is amended to read:

"**23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant must own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July 1, 2007, pursuant to 16-4-204 is not eligible to offer gambling;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(f). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(d) a retail beer and wine license issued under 16-4-109;

(e) a resort retail all-beverages license issued under 16-4-213; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under ~~16-4-404(6)~~ *[section 1]* who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6.

(5) A license issued under a competitive bidding process as provided in 16-4-430 is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6."

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 29

[HB 123]

AN ACT REVISING ALCOHOL LAWS TO PROHIBIT THE PROSPECTING OF CERTAIN RETAIL ALCOHOLIC BEVERAGE LICENSES; REQUIRING 1 YEAR OF USE PRIOR TO TRANSFERRING A LICENSE; PROVIDING EXCEPTIONS IN THE EVENT OF DEATH OR CIRCUMSTANCES REASONABLY BEYOND THE CONTROL OF THE LICENSEE; AMENDING SECTION 16-4-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. License operation requirements.** (1) A licensee under 16-4-104, 16-4-201, 16-4-204, or 16-4-420 shall:

(a) commence operating the license on issuance of the license from the department, unless the licensee was approved for a license without a premises under 16-4-417; and

(b) operate the license for 1 year prior to transferring the license to another person or business entity unless that transfer is due to a death of an owner.

(2) Failure to comply with the provisions of subsection (1) subjects the licensee to license revocation.

**Section 2.** Section 16-4-417, MCA, is amended to read:

"**16-4-417. Approval of a licensee without premises -- *nonuse approval*.** (1) If an applicant has a license available to obtain under 16-4-104, 16-4-201, 16-4-204, or 16-4-420 but does not have a premises, the department may approve the applicant without approving the premises. The department shall issue the license if all other requirements of this code related to an applicant are met.

(2) *(a)* A license issued under subsection (1) must be immediately put on nonuse status until a premises is approved by the department *and may not be transferred to another person or business entity prior to approval of the premises unless that transfer is due to a death of an owner or was reasonably beyond the control of the licensee*. ~~Upon~~ *On* issuance of the license under this section, the licensee shall apply for a premises within 6 months and must have the premises approved within 1 year from issuance of the license. *The department may extend the nonuse period if the licensee provides evidence that the delay in use is for reasons outside the licensee's control and that the licensee is making progress toward licensure.*

*(b) After approval of the premises, a licensee shall operate the license for 1 year prior to transferring the license to another person or business entity unless that transfer is due to a death of an owner.*

*(c)* A licensee shall pay all licensing fees annually even if the premises has not been approved. The department may establish nonuse license fees for a license issued under this section."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 30

[HB 150]

REVISING LEGISLATIVE CONSTITUENT SERVICES ALLOWANCE LAWS; PROVIDING FOR ENFORCEMENT BY THE ETHICS COMMITTEES DURING AND BETWEEN SESSIONS; REVISING THE NAME OF THE PROGRAM; REVISING METHOD BY WHICH LEGISLATORS RECEIVE ALLOWANCE; SPECIFYING ACTIVITIES FOR WHICH THE ALLOWANCE IS AUTHORIZED AND PROHIBITED; AMENDING SECTIONS 2-2-111, 5-2-204, AND 5-2-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-2-111, MCA, is amended to read:

"**2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; ~~or~~

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision*; or*

*(4) use the funds provided for in 5-2-204 for an activity that is prohibited*."

**Section 2.** Section 5-2-204, MCA, is amended to read:

"**5-2-204. ~~Constituent services stipend~~ *Legislative constituent services allowance, stipend,* and reimbursement.** (1) Each legislator is entitled to ~~a~~ *an allowance or* stipend of $3,000 in a biennium for providing constituent services~~, which include but are not limited to unreimbursed expenses for mileage, per diem, or lodging as well as communication and information technology, such as expenses for telecommunications or internet, computer hardware and software, postage, and education-related expenses to represent constituents~~ *and authorized activities related to serving in the legislature. A legislator shall elect between receiving an allowance or a stipend before receiving a payment under either method. If a legislator elects to receive an allowance, the legislator shall apply for reimbursement to the legislative services division by submitting written documentation. The allowance amount may be used for the following authorized activities that are not otherwise reimbursed:*

*(a) mileage and lodging at rates provided for in 2-18-501 and 2-18-503 for authorized activities;*

*(b) meals at rates provided for in 2-18-501 and 2-18-502 when a legislator is in a travel status for authorized activities;*

*(c) communication and information technology expenses, including internet charges, computer hardware and software, postage for authorized activities, and preparation, printing, and postage costs related to educational material as provided in subsection (7); and*

*(d) education-related expenses related to attending meetings for interstate and intrastate organizations that provide opportunities for legislators to participate in policy and civic educational activities. Education-related expenses under this subsection (1)(d) include transportation, meals, and lodging at rates provided for in subsections (1)(a) and (1)(b) and for registration costs.*

*(2) The following activities are prohibited from reimbursement and may not be paid for from the stipend:*

*(a) except as provided in subsection (7), expenses related to election communications or electioneering communications, as those terms are defined in 13-1-101;*

*(b) contributions, expenditures, or other expenses related to participation in a political committee, as the terms "contribution", "expenditure", and "political committee" are defined in 13-1-101;*

*(c) costs for all or any portion of an event, meeting, fundraiser, or gathering at which contributions, as defined in 13-1-101, will be solicited or received by any person;*

*(d) any direct travel, lodging, meals, entertainment, or other expenses related to the sponsorship of an event, meeting, fundraiser, or gathering at which contributions, as defined in 13-1-110, will be solicited or received by any person;*

*(e) any direct or indirect expenditure to support or oppose a candidate or ballot issue; and*

*(f) entertainment.*

~~(2)~~*(3)* Subject to subsections ~~(4) and~~ (5) *and (6)*, legislators are allowed *an additional* reimbursement of up to the amount provided for in subsection ~~(3)~~ *(4)* in a biennium for otherwise unreimbursed expenses related to the legislator's expenses for ~~mileage, meals, or lodging at rates provided for in 2-18-501 through 2-18-503 incurred for providing constituent services~~ *authorized activities provided in subsections (1)(a) and (1)(b).*

~~(3)~~*(4)* The amount authorized under subsection ~~(2)~~ *(3)* is:

(a) $1,000 if the legislator's district is at least 100 square miles but less than 1,000 square miles;

(b) $2,000 if the legislator's district is at least 1,000 square miles but less than 5,000 square miles;

(c) $3,000 if the legislator's district is at least 5,000 square miles but less than 7,500 square miles; or

(d) $4,000 if the legislator's district is 7,500 square miles or more.

~~(4)~~*(5)* For expenses authorized under subsection ~~(2)~~ *(3)*, a legislator shall apply for reimbursement to the legislative services division by submitting written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5.

~~(5)~~*(6)* Legislators may not be reimbursed for expenses paid from a constituent services account provided for in 13-37-402.

*(7) Authorized activities include the preparation, printing, and postage costs related to distribution of educational material to constituents. The distribution of educational material in whole or in part to constituents in a legislator's district based on the available funding provided in this section is not considered election communications or electioneering communications, as those terms are defined in 13-1-101, if the education material does not encourage the support of or opposition to a candidate or ballot issue.*

*(8) If a legislator resigns during a legislator's term, any amount unexpended must remain with the legislative services division. A legislator appointed to fill a vacancy during a term may receive an amount prorated over the 24-month term.*

*(9) Any violation of this section is subject to the provisions in 2-2-135 and is subject to enforcement by the ethics committee in the appropriate chamber.*"

**Section 3.** Section 5-2-205, MCA, is amended to read:

"**5-2-205. Authority for standing committees to meet during interim.** (1) Except as provided in 5-2-202[, 5-12-501 through 5-12-504,] and ~~subsection~~ *subsections* (2) *and (3)* of this section, a standing committee of the legislature, as provided for in legislative rules, may not meet during the interim between regular legislative sessions.

(2) Upon approval of the president of the senate or the speaker of the house of representatives, a standing committee may meet before a special session, as provided in 5-3-101, or during a special session.

*(3) An ethics committee provided for in 2-2-135 may meet at any time during the session or the interim.* (Bracketed language terminates December 31, 2025--sec. 12, Ch. 525, L. 2021.)"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 31

[HB 15]

AN ACT APPLYING INFLATIONARY ADJUSTMENTS TO SCHOOL FUNDING FORMULA COMPONENTS; AMENDING SECTION 20-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment;

(f) the total American Indian achievement gap payment;

(g) the total data-for-achievement payment; and

(h) the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) ~~$326,073 for fiscal year 2022 and $334,453~~ *$343,483 for fiscal year 2024 and $353,787* for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) ~~$326,073 for fiscal year 2022 and $334,453~~ *$343,483 for fiscal year 2024 and $353,787* for each succeeding fiscal year for school districts with an ANB of more than 800, plus ~~$16,304 for fiscal year 2022 and $16,723~~ *$17,175 for fiscal year 2024 and $17,690* for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~$54,344 for fiscal year 2022 and $55,741~~ *$57,246 for fiscal year 2024 and $58,963* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) ~~$54,344 for fiscal year 2022 and $55,741~~ *$57,246 for fiscal year 2024 and $58,963* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~$2,718 for fiscal year 2022 and $2,788~~ *$2,863 for fiscal year 2024 and $2,949* for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) ~~$54,344 for fiscal year 2022 and $55,741~~ *$57,246 for fiscal year 2024 and $58,963* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) ~~$54,344 for fiscal year 2022 and $55,741~~ *$57,246 for fiscal year 2024 and $58,963* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~$2,718 for fiscal year 2022 and $2,788~~ *$2,863 for fiscal year 2024 and $2,949* for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) ~~$108,690 for fiscal year 2022 and $111,483~~ *$114,493 for fiscal year 2024 and $117,928* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) ~~$108,690 for fiscal year 2022 and $111,483~~ *$114,493 for fiscal year 2024 and $117,928* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus ~~$5,434 for fiscal year 2022 and $5,574~~ *$5,724 for fiscal year 2024 and $5,896* for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district's special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying ~~$223 for fiscal year 2022 and $229~~ *$235 for fiscal year 2024 and $242* for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

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

(13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying ~~$21.73 for fiscal year 2022 and $22.29~~ *$22.89 for fiscal year 2024 and $23.58* for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(14) "Total Indian education for all payment" means the payment resulting from multiplying ~~$22.70 for fiscal year 2022 and $23.28~~ *$23.91 for fiscal year 2024 and $24.63* for each succeeding fiscal year times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$7,443 for fiscal year 2022 and $7,634~~ *$7,840 for fiscal year 2024 and $8,075* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~$5,813 for fiscal year 2022 and $5,962~~ *$6,123 for fiscal year 2024 and $6,307* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~$5,813 for fiscal year 2022 and $5,962~~ *$6,123 for fiscal year 2024 and $6,307* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for

each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$7,443 for fiscal year 2022 and $7,634~~ *$7,840 for fiscal year 2024 and $8,075* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(16) "Total quality educator payment" means the payment resulting from multiplying ~~$3,385 for fiscal year 2022 and $3,472~~ *$3,566 for fiscal year 2024 and $3,673* for each succeeding fiscal year by the sum of:

(a) the number of full-time equivalent educators as provided in 20-9-327; and

(b) as provided in 20-9-324, for a school district meeting the legislative goal for competitive base pay of teachers, the number of full-time equivalent teachers that were in the first 3 years of the teacher's teaching career in the previous year.

(17) "Total special education allocation" means the state payment distributed pursuant to 20-9-321 that is the greater of the amount resulting from multiplying ~~$287.93 for fiscal year 2022 and $286.02~~ *$293.74 for fiscal year 2024 and $302.55* for each succeeding fiscal year by the statewide current year ANB or the amount of the previous year's total special education allocation."

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

**Section 3. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2023.

Approved March 2, 2023

# CHAPTER NO. 32

[HB 145]

AN ACT REVISING ALCOHOLIC BEVERAGES LICENSED PREMISES MORATORIUM LAWS; REDUCING THE TIME PERIOD FOR THE MORATORIUM; AMENDING SECTION 16-4-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-4-413, MCA, is amended to read:

"**16-4-413. Denial of application -- ~~five-year~~ *two-year* moratorium.** (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for ~~5~~ *2* years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The ~~5-year~~ *2-year* prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

(a) the capacity of the proposed use;
(b) the nature of the establishment;
(c) the presence and character of any entertainment; and
(d) the characteristics of the neighborhood."

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

Approved March 2, 2023

# CHAPTER NO. 33

[HB 157]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE DEPARTMENT OF REVENUE'S OPERATIONS AND DUTIES; REVISING THE DEFINITION OF TABLE WINE; CLARIFYING LANGUAGE RELATING TO THE SALE OF LIQUOR; REVISING LAWS RELATING TO THE PREPARATION OF ALCOHOL; CLARIFYING LANGUAGE RELATING TO DEPARTMENT DUTIES; REVISING LAWS RELATING TO WITHDRAWAL OF LIQUOR FROM THE REGULAR WAREHOUSE INVENTORY; AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-202, 16-1-302, AND 16-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

(11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

(12) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(13) "Growler" means any fillable, sealable container complying with federal law.

(14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(15) "Immediate family" means a spouse, dependent children, or dependent parents.

(16) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

(18) "Malt beverage" means:

(a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or

(b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.

(19) (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.

(b) The term includes but is not limited to:

(i) bottles;

(ii) cans; and

(iii) kegs.

(20) "Package" means a container or receptacle used for holding an alcoholic beverage.

(21) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

(22) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed with a lid, for consumption at a place other than the licensee's premises.

(23) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(24) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(25) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(26) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(27) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(28) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(29) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(30) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(31) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(32) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes *hard* cider.

(33) "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.

(34) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(35) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 2.** Section 16-1-201, MCA, is amended to read:

"**16-1-201. Acts not covered by code.** (1) Nothing in this code prevents any brewer, distiller, or other person, licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, is authorized and permitted by any brewer, distiller, rectifier, or other person licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States. The department may adopt rules that the department considers necessary with respect to the manufacture of alcoholic beverages. The rules may not be inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the provisions of chapter 51 of the Internal Revenue Code.

(3) Nothing in this code prevents:

(a) the sale of liquor ~~or table wine~~ by any person to the department;

(b) the purchase, importation, and sale of liquor ~~and table wine~~ by the department for the purposes of and in accordance with this code."

**Section 3.** Section 16-1-202, MCA, is amended to read:

"**16-1-202. Preparations not subject to code.** (1) Subject to the provisions of this section, nothing in this code, by reason only that a preparation contains alcohol, prevents the manufacture, sale, purchase, or consumption of any:

(a) extract, essence, or tincture or other preparation containing alcohol that is prepared according to a formula of the United States Pharmacopoeia ~~or according to a formula approved of by the department~~; or

(b) proprietary or patent medicine ~~prepared according to a formula approved of by the department~~.

(2) The department, if of the opinion that any proprietary or patent medicine, extract, essence, tincture, or preparation that contains alcohol or any other preparation of a solid, semisolid, or liquid nature that contains alcohol can be used or that an extract from the substance can be used as a beverage or as the ingredient of a beverage, may prohibit the retail sale or the possession of the substance for retail sale within the state, except by an agency liquor store or by persons licensed by the department to keep and sell the substance by retail in accordance with this code and the regulations made under this code.

(3) The department shall notify the manufacturer or vendor of the proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition."

**Section 4.** Section 16-1-302, MCA, is amended to read:

"**16-1-302. Functions, powers, and duties of department.** The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services and to receive and process, but not grant or deny, applications or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate. If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.

(7) to determine the nature, form, and capacity of all packages to be used for containing ~~liquor~~ *alcoholic beverages* kept or sold under this code;

(8) to grant and issue licenses *and permits* under this code;

(9) to place special restrictions *and allowances* on the use of a particular license, which must be endorsed ~~upon~~ *on* the face of the license, if the special restrictions *and allowances* are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions *and allowances* are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

**Section 5.** Section 16-1-304, MCA, is amended to read:

"**16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with license applications or the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in ~~liquor~~ *alcoholic beverages*, whether as owner, part owner, partner, member of a syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit *at the request of the department*, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory ~~or from the agency liquor stores~~ for any purpose other than sale to ~~persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent~~ *an agent of an agency liquor store, returning to the supplier,* or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 34

[HB 160]

AN ACT REVISING BEER ADVERTISING LIMITATIONS BY REMOVING THE RESTRICTION THAT A RETAIL LICENSEE MAY NOT DISPLAY OR PERMIT TO BE DISPLAYED BEER ADVERTISING ON THE EXTERIOR OF BUILDINGS ADJACENT TO THE LICENSEE'S PREMISES; AND AMENDING SECTION 16-3-244, MCA.

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

**Section 1.** Section 16-3-244, MCA, is amended to read:

"**16-3-244. Beer advertising limitations.** It is lawful to advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 ~~of this code~~ and subject to the following restrictions on retailers. A retail licensee may not display or permit to be displayed on the exterior portion or surface of the retailer's place of business ~~or on the exterior portion or surface of any building of which the place of business is a part or on any premises adjacent to the place of business~~, whether any of the premises are owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation

indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period."

Approved March 2, 2023

## CHAPTER NO. 35

[HB 166]

AN ACT REVISING ALCOHOLIC BEVERAGES LAWS RELATING TO THE SEASONAL STATUS OF RETAIL ALCOHOLIC BEVERAGES AND LICENSES; ELIMINATING SPECIFIC EXAMPLES OF SEASONAL BUSINESSES; PROVIDING FOR A 1-YEAR NONUSE PERIOD IF THE LICENSEE NOTIFIES THE DEPARTMENT; AMENDING SECTION 16-3-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-3-310, MCA, is amended to read:

"**16-3-310. Lapse of license for nonuse -- *approved nonuse.*** *(1)* Any retail license issued pursuant to this code (including any retail license to sell beer and table wine for off-premises consumption) not actually used in a going establishment for 90 days ~~shall~~ *must* automatically lapse *if the licensee does not notify the department within the 90-day time period*. ~~Upon~~ *On* determining the fact of nonuse for ~~such~~ *this* period, the department shall cancel ~~such~~ *the* license of record and no portion of the fee paid ~~therefor shall~~ *for it may* be refundable.

*(2)* The provisions of this section ~~shall~~ *do* not apply to the license of any licensee whose premises are operated on a seasonal basis ~~in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business~~, provided ~~such~~ *the* licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. ~~Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply.~~

*(3) If the licensee notifies the department within the 90 days of nonuse, the department shall grant approved nonuse for up to 1 year. The department may extend the nonuse period if the licensee provides evidence that the delay in use is for reasons outside the licensee's control or that the licensee is progressing on a department-approved alteration.*"

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

Approved March 2, 2023

## CHAPTER NO. 36

[HB 175]

AN ACT EXPANDING DEFINITION OF LINE-ITEM TRANSFER IN CHAPTER 401, LAWS OF 2021; PROVIDING FOR EXPANDED TRANSFER OF APPROPRIATION AUTHORITY IN CHAPTER 401, LAWS OF 2021; AMENDING SECTION 26(2), CHAPTER 401, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1** Section 26(2), Chapter 401, Laws of 2021, is amended to read:

**"Section 26(2). Modifications to appropriations and authorizations – report of modifications or changes.** (2) (a) If a proposed line-item transfer or a fund switch in [this act] exceeds $100,000, the budget director shall submit an explanation and detailed description of the requested line-item transfer or fund switch to the legislative fiscal analyst 30 days prior to the next scheduled meeting of the legislative finance committee.

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

(i) "Line-item transfer" means the transfer of appropriation authority from one line-item appropriation to a different line-item appropriation within the same section of [this act] or between any appropriations made in [sections *7, 9, 12, and* 14 through 25] of [this act].

(ii) "Fund switch" means a change in a line-item fund source or account to another fund source or account."

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

Approved March 2, 2023

# CHAPTER NO. 37

[HB 153]

AN ACT GENERALLY REVISING LAWS REGARDING LIVESTOCK AUCTIONS; UPDATING LAWS REGARDING LIVESTOCK VIDEO AUCTIONS; REMOVING CERTAIN REQUIREMENTS FROM LIVESTOCK OPERATION CERTIFICATION APPLICATIONS; AMENDING SECTIONS 81-8-213, 81-8-251, 81-8-252, 81-8-264, AND 81-8-265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 81-8-213, MCA, is amended to read:

"**81-8-213. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Custodial account for shippers' proceeds" or "custodial account" means a separate account established and maintained by a ~~market agency or a satellite video livestock~~ *livestock market or livestock video* auction ~~market~~ engaged in selling livestock on a commission or agency basis. The account must be maintained in a Montana bank insured by the federal deposit insurance corporation and used to maintain and disburse all funds due to consignors from livestock sold on a commission basis. All checks or banking instruments to consignors in payment of the net proceeds from the sale of consigned livestock must be issued on the custodial account. This account must disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.

(5) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(6) (a) "Livestock dealer" means a person engaged in the business of ~~purchasing livestock:~~

~~(i) for immediate resale;~~

~~(ii) for interstate shipment; or~~

~~(iii) on a commission or fee basis:~~

~~(A) for the account of others; or~~

~~(B) for or on behalf of a dealer or a market~~ *buying or selling livestock in commerce on the person's own account or as an employee or agent of a vendor or purchaser*.

(b) The term does not include*:*

*(i)* a farmer or rancher who buys or sells livestock in the ordinary course of a farming or ranching operation.*; or*

*(ii) a livestock market.*

(7) *(a)* "Livestock market" means ~~a place where a person for compensation assembles livestock for sale, except~~:

*(i) a person engaged in the business of buying or selling livestock in commerce on a commission basis;*

*(ii) a person engaged in the business of furnishing stockyard services; or*

*(iii) a livestock video auction as defined in this section.*

*(b) The term does not include:*

~~(a)~~*(i)* a place used solely for a dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing business and at which other livestock is not sold or offered for sale;

~~(b)~~*(ii)* a farm, ranch, or place where livestock either raised or kept for the grazing season or for fattening is sold and to which other livestock is not brought for sale or to be offered for sale;

~~(c)~~*(iii)* the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

~~(d)~~*(iv)* the premises of a person engaged in the raising of livestock for breeding purposes only, who limits sale to livestock of the person's own production; *or*

~~(e)~~*(v)* a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under the breeder's or the association's own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

*(8) "Livestock video auction" means a person who conducts the business of buying or selling livestock on a commission or fee basis through the use of online, video, or other electronic means and who provides the means for handling receivables or proceeds resulting from these types of transactions.*

~~(8)~~*(9)* "Person" means an individual, firm, association, partnership, or corporation.

~~(9) "Satellite video livestock auction market" or "video auction market" means a place or establishment operated or conducted for compensation or profit as a public market where livestock located in this state are sold or offered for sale at a facility within the state through the use of a satellite video at a public auction.~~

(10) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock."

**Section 2.** Section 81-8-251, MCA, is amended to read:

"**81-8-251. Certificate to operate livestock market required -- application.** (1) A person may not operate a livestock market unless the person first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience must be in writing, verified by the applicant, and filed with the department. The application must specify the following:

(a) *(i)* the names of the persons applying for a certificate together with their permanent addresses.*; or*

*(ii)* ~~If~~ *if* the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered by the applicant in the operation of the livestock market;

~~(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators of those markets;~~

~~(f)~~*(e)* a detailed statement of the facts ~~upon~~ *on* which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, *and* the services to be offered~~, and the anticipated revenue from inspection that may be derived by the state~~;

~~(g)~~*(f)* if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

~~(h)~~*(g)* a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities; *and*

~~(i)~~*(h)* any additional information the department may require."

**Section 3.** Section 81-8-252, MCA, is amended to read:

"**81-8-252. Hearing on application for certificate -- decision.** (1) Upon the filing of ~~the~~ *an* application *for a certificate of public convenience pursuant to 81-8-251*, the department shall fix a time and place for a hearing ~~thereon~~ *on the application*, which may not be less than 10 days after the filing. The department shall have a copy of the application, excluding the financial statement described in 81-8-251~~(2)(h)~~*(2)(g)*, and notice of the hearing served by mail ~~upon~~ *on*:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of ~~any such~~ *the* certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect ~~upon~~ *on* them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year."

**Section 4.** Section 81-8-264, MCA, is amended to read:

"**81-8-264. ~~Satellite video livestock auction market~~ *Livestock video auction* -- license to transact business -- license fee -- contract -- renewal.** (1) A ~~satellite video livestock auction market~~ *livestock video auction* may transact business in this state only through a licensed livestock dealer or

through a livestock market that is domiciled in the state. *The livestock video auction is subject to the same regulation as the domiciled livestock market.*

(2) A livestock dealer or a livestock market that proposes to transact business with a ~~video auction market~~ *livestock video auction pursuant to subsection (1)* shall file an application for a license with the department on a form prescribed by the department with the following information:

(a) the nature of the business for which a license is requested;

(b) the name and address of the livestock dealer or the livestock market;

(c) the name and address of the ~~video auction market~~ *livestock video auction*; and

(d) any additional information that the department may require.

(3) The application must be accompanied by:

(a) a fee established by the department commensurate with the costs of administering 81-8-265 and this section;

(b) evidence that the department may require indicating that the ~~video auction market~~ *livestock video auction* is financially responsible and bonded to transact business and has established a custodial account for shippers' proceeds; and

(c) a copy of the contract between the licensed livestock dealer or the livestock market and the ~~video auction market~~ *livestock video auction*. The contract must provide:

(i) for reasonable access by the department to all records and documents relating to the activities of the ~~video auction market~~ *livestock video auction*; and

(ii) that the livestock dealer or the livestock market and the ~~video auction market~~ *livestock video auction* are jointly and severally liable, with the right of contribution, for all business transacted within the state.

(4) If the contract described in subsection (3)(c) is terminated, rescinded, breached, or materially altered, the livestock dealer or the livestock market shall immediately notify the department. Failure to notify the department is considered to be:

(a) a failure to keep and maintain suitable records with the department; and

(b) a false entry or statement of fact in an application filed with the department.

(5) On or before May 1 of each year, a livestock dealer or a livestock market shall renew the license by fulfilling the requirements of subsections (1) through (4).

(6) The license fee must be remitted to the state treasurer to the credit of the department."

**Section 5.** Section 81-8-265, MCA, is amended to read:

"**81-8-265. Refusal to issue or renew license -- suspension or revocation.** (1) The department may refuse to issue or renew a license in accordance with the provisions of 81-8-273.

(2) The department may suspend or revoke a license in accordance with the provisions of 81-8-274.

(3) If the contract between the livestock dealer or the livestock market and the ~~video auction market~~ *livestock video auction* is terminated, rescinded, breached, or otherwise materially altered by either party, the department may refuse to renew the license or may suspend or revoke the license."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 38

[HB 149]

AN ACT GENERALLY REVISING THE 9-1-1 PROGRAM; REVISING DEFINITIONS; TRANSFERRING AUTHORITY FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF JUSTICE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-17-506, 2-17-512, 2-17-513, 2-17-516, 2-17-543, AND 2-17-545, MCA.

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

**Section 1.** Section 2-17-506, MCA, is amended to read:

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

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

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

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

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

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

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

(7) "Information technology" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

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

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

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

~~(11)~~*(9)* "State agency" means any entity of the executive branch, including the university system.

~~(12)~~*(10)* "Statewide telecommunications network" means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another."

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

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

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

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

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

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

(e) establish and enforce statewide information technology policies and standards;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 3.** Section 2-17-513, MCA, is amended to read:

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

(1) provide a forum to:

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

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

(2) advise the department:

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

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

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

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

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

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

(3) review and advise the department on:

(a) statewide information technology standards and policies;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

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

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

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

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

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

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

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

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

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

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

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

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

**Section 4.** Section 2-17-516, MCA, is amended to read:

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

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

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

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

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

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

(3) The department, upon notification of proposed activities by the department of justice, the secretary of state, the university system, or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) (a) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network or fails to meet the minimum security policies and standards set by the department.

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

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

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

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

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

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

**Section 5.** Section 2-17-543, MCA, is amended to read:

"**2-17-543. ~~Rulemaking~~ *9-1-1 and mutual aid frequency programs -- rulemaking* authority.** (1) *The department of justice shall:*

*(a) coordinate public safety communications on behalf of public and private safety agencies as provided in 2-17-544, 2-17-545, and this section; and*

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

*(2)* The department *of justice* may adopt rules to implement the mutual aid frequency manual provided for in 2-17-545.

~~(2)~~*(3)* The department *of justice* shall obtain input from all public and private safety agency users of mutual aid frequencies for land mobile radio.

*(4) As used in 2-17-544 and this section, "public safety agency" and "private safety agency" have the same meanings as provided in 10-4-101.*"

**Section 6.** Section 2-17-545, MCA, is amended to read:

"**2-17-545. Mutual aid frequencies manual -- land mobile radio.** The department *of justice* shall develop and maintain a manual that includes policies and procedures for the effective and efficient use of mutual aid frequencies for land mobile radio."

Approved March 2, 2023

# CHAPTER NO. 39

[HB 58]

AN ACT REVISING THE DEBT COLLECTION SERVICES OF THE DEPARTMENT OF REVENUE BY PROVIDING FOR AN AGREEMENT WITH AN AGENCY TO ASSIST IN COLLECTION OF A DELINQUENT ACCOUNT; AMENDING SECTIONS 17-4-103 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-4-103, MCA, is amended to read:

"**17-4-103. Collection of claims by department.** (1) (a) The department may examine the collection of money due an agency and institute suits:

(i) in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue;

(ii) against persons who possess public money or property and fail to pay over or deliver the money or property; and

(iii) against debtors of the agencies.

(b) The courts of the county where the seat of government is located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the department within the time prescribed by law or, when a particular time is not specified, fails to render an account and make settlement or fails to pay into the state treasury the money belonging to the state, upon being required to

do so by the department, within 20 days after the requisition, the department shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the department cannot for want of information state an account, the department may in an action aver that fact and allege generally the amount of money or other property due or belonging to the state.

(3) (a) The department may assist in the collection of a delinquent account owing to an agency and may separately charge the agency ~~that transferred the debt~~ for the cost of assistance. *The department may enter into an agreement with an agency to assist in the collection of a delinquent account.* The department may designate the percentage of collected proceeds to be retained for the cost of assistance. The cost of assistance for collecting personal property taxes that would otherwise be collected by the county treasurer must be allocated in the same manner in which the taxes are distributed.

(b) A delinquent personal property tax usually collected by the county treasurer may be collected by the department only on request of the board of county commissioners. The request must be accompanied by proof of the amount of tax due and proof of the delinquency. The board shall also provide proof that, at least 30 days before making the request, the county has notified the delinquent taxpayer by mail of the board's intention to request assistance from the department.

(4) The department may provide a collection service for the general purpose of centralizing the collection of all debts owed to agencies."

**Section 2.** Section 17-4-105, MCA, is amended to read:

"**17-4-105. Authority to collect debt -- offsets.** (1) ~~Once~~ *When the department enters into an agreement to collect a delinquent account pursuant to 17-4-103(3) or* a debt of an agency has been transferred to the department *pursuant to 17-4-104*, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to the state any taxes or other debts owed to an agency of the state. Except as provided in subsection (3)(c), the state may also enter into a reciprocal agreement with the federal government for the state to offset against tax refunds payable by the state and pay to the federal government any taxes or other debts owed to the federal government.

(b) For purposes of offsetting of debts referred to in subsection (3)(a), offsets or payments will be made in the following priority:

(i) child support payments;

(ii) any debts that are owed to this state, an agency of this state as defined in 17-4-101, or a local government unit, including a county, city, town, consolidated city-county, school district, or local public entity with the authority to spend or receive public funds; and

(iii) any debts owed to the federal government.

(c) Taxes or debts that cannot be liened or levied upon pursuant to 26 U.S.C. 5000A(g) must be excluded from the offset.

(d) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state any taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(d)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by subsection (3)(a) or (3)(d)(i) only if the other state or agency of the other state or the federal government allows the offset against tax refunds owed by the other state or agency of the other state or the federal government any taxes or other debts owed to this state or an agency of this state.

(e) A state or agency of another state or the federal government entering into an agreement with the department pursuant to subsection (3)(a) or (3)(d)(i) may not exercise the offset against tax refunds unless the other state or agency of the other state or the federal government has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt does not need to be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as if it were filed by the person or entity. The amount due any person or entity

from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

(6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121."

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

Approved March 2, 2023

# CHAPTER NO. 40

[HB 22]

AN ACT REVISING THE USE OF REVENUE FROM TEACHER LICENSURE FEES BY THE BOARD OF PUBLIC EDUCATION; AMENDING SECTION 20-4-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-4-109, MCA, is amended to read:

"**20-4-109. Fees for teacher and specialist certificates.** (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used ~~in the following manner:~~

~~(a) $4~~ for expenses of the *board of public education and the* certification standards and practices advisory council created in 2-15-1522~~;~~

~~(b) $2 to the board of public education and the certification standards and practices advisory council for activities~~ in support of the constitutional and statutory duties of the board of public education and the certification standards and practices advisory council.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account."

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

Approved March 2, 2023

# CHAPTER NO. 41

[HB 120]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO ALLOW ALCOHOLIC BEVERAGE MANUFACTURER TRADE SHOWS; ALLOWING ALCOHOLIC BEVERAGE MANUFACTURERS TO SHOWCASE PRODUCTS AT TRADE SHOWS; AND PROVIDING RULEMAKING AUTHORITY.

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

**Section 1. State-allowed industry trade shows -- rulemaking.** (1) The department may allow industry trade shows to allow alcoholic beverage manufacturers the ability to showcase alcoholic beverage products to industry trade show attendees. The department may partner with other state agencies to allow an industry trade show.

(2) An alcoholic beverage manufacturer may:

(a) using its own equipment, trucks, and employees or using a common carrier, deliver alcoholic beverages it produces from its premises to the industry trade show; and

(b) provide samples of its products to attendees of the industry trade show in quantities established by the department.

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

(4) The department may only recoup administrative costs and may not endorse vendors for a trade show as provided in this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 1, part 3, and the provisions of Title 16, chapter 1, part 3, apply to [section 1].

Approved March 2, 2023

# CHAPTER NO. 42

[HB 70]

AN ACT REVISING ALCOHOL LAWS PERTAINING TO THE RENEWAL OF LICENSES; REVISING THE RENEWAL STATUTE TO INCLUDE LICENSEES ALREADY SUBJECT TO THE STATUTE; REVISING LAWS RELATING TO THE NONRENEWAL OF A LICENSE BY THE DEPARTMENT; REVISING LAWS RELATING TO PAYMENT OF ANNUAL RENEWAL FEES; AMENDING SECTION 16-4-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-4-407, MCA, is amended to read:

"**16-4-407. ~~Suspension or revocation~~ *Renewal and nonrenewal* of licenses -- *notices of federal permit.*** *(1)* Each July 1 or, when applicable, on the licensee's anniversary date, the department shall issue licenses to brewers, wineries, *distillers,* beer importers, *beer* wholesalers, *table wine distributors,* or retailers ~~or for the retail sale of alcoholic beverages~~ on an annual basis ~~upon~~ *on receipt of a completed renewal form and* payment of the fees prescribed by law.

*(2)* ~~The licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year or 1 year after the anniversary if~~ *Subject to the opportunity for a hearing, the department may refuse to renew a license if the licensee no longer qualifies for licensure under 16-4-401, a completed license renewal form has not been received, or* the annual renewal fees required by 16-4-501 are not paid *by July 1 or, when applicable, the licensee's anniversary date.*

*(3)* The department shall notify each applicant for an original license or renewal that it is the applicant's responsibility to determine if applicable provisions of federal law require the applicant to obtain a permit from a federal agency."

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

Approved March 2, 2023

# CHAPTER NO. 43

[SB 191]

AN ACT REVISING PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER LAWS; INCORPORATING THE FEDERAL STANDARD FOR A PRELIMINARY INJUNCTION INTO MONTANA LAW AS THE GENERAL STANDARD FOR A PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER; REQUIRING THE APPLICANT FOR A PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER TO SHOW WHY AN INJUNCTION OR TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED; PROVIDING A DECLARATION OF LEGISLATIVE INTENT; AMENDING SECTIONS 27-19-201, 27-19-301, AND 27-19-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 27-19-201, MCA, is amended to read:

"**27-19-201. When preliminary injunction may be granted -- *legislative intent.*** ~~An injunction order may be granted in the following cases:~~

~~(1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;~~

~~(2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;~~

~~(3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;~~

*(1) A preliminary injunction order or temporary restraining order may be granted when the applicant establishes that:*

*(a) the applicant is likely to succeed on the merits;*

*(b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;*

*(c) the balance of equities tips in the applicant's favor; and*

*(d) the order is in the public interest.*

*(2) An injunction order may be granted in either of the following cases between persons, not including a person being sued in that person's official capacity:*

~~(4)~~*(a)* when it appears that the adverse party, ~~during the pendency of~~ *while* the action *is pending*, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, *in which case* an injunction order may be granted to restrain the removal or disposition; *or*

~~(5)~~*(b)* when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15.

*(3) The applicant for an injunction provided for in this section bears the burden of demonstrating the need for an injunction order.*

*(4) It is the intent of the legislature that the language in subsection (1) mirror the federal preliminary injunction standard, and that interpretation and application of subsection (1) closely follow United States supreme court case law.*"

**Section 2.** Section 27-19-301, MCA, is amended to read:

"**27-19-301. Notice of application -- hearing.** (1) No preliminary injunction *order* may be issued without reasonable notice to the adverse party

of the time and place ~~of the making of the application therefor~~ *that application for the injunction order was made.*

(2) Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should ~~not~~ be granted, and the adverse party may in the meantime be restrained as provided in 27-19-314."

**Section 3.** Section 27-19-315, MCA, is amended to read:

"**27-19-315. When restraining order may be granted without notice.** A temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if:

(1) ~~it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the party's attorney could be heard in opposition~~ *the applicant or the applicant's attorney makes a showing that the requirements of 27-19-201(1) are met*; ~~and~~ *and*

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give notice and the reasons supporting the applicant's claim that notice should not be required."

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved March 2, 2023

# CHAPTER NO. 44

[HB 192]

AN ACT PROVIDING FOR THE DISTRIBUTION OF SURPLUS REVENUE; DISTRIBUTING SURPLUS REVENUE TO MONTANANS BASED ON CERTAIN INDIVIDUAL INCOME LIABILITY FOR SURPLUS REBATES; PROVIDING RESIDENT TAXPAYERS SURPLUS REBATES FOR INDIVIDUAL INCOME TAXES PAID; PROVIDING A STATUTORY APPROPRIATION; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-30-2110 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Montana surplus rebate account.** (1) There is a Montana surplus rebate account in the state special revenue fund provided for in 17-2-102.

(2) The state treasurer shall transfer $480 million from the general fund to the account by July 1, 2023.

(3) Money in the account must be used for individual income tax rebates provided for in [section 2] and associated administrative costs.

(4) The amount provided for in subsection (3) is statutorily appropriated, as provided in 17-7-502, to the department of revenue.

(5) The state treasurer shall transfer to the general fund money remaining in the account after June 30, 2025.

**Section 2. Individual income tax rebate.** (1) By December 31, 2023, the department of revenue shall issue, to a qualified taxpayer who incurred individual income tax liability in Montana in 2021, a one-time income tax rebate in an amount equal to the lesser of:

(a) the qualified taxpayer's 2021 individual income tax liability as properly reported on line 20 of the 2021 Montana individual income tax return; or

(b) an amount based on the taxpayer's 2021 filing status, equal to:

(i) for a single taxpayer, a head of household, or a married taxpayer filing a separate return, $1,250; or

(ii) for a married couple filing a joint return, $2,500.

(2) The department may not issue a rebate pursuant to this section that exceeds the taxpayer's individual income tax liability as properly reported on line 20 of the 2021 Montana individual income tax return.

(3) (a) Except as provided in subsection (3)(b), the department shall issue rebates provided for in this section electronically or by mailing a check to the taxpayer's mailing address based on the taxpayer's refund instructions.

(b) A rebate provided for in this section must first be credited against any outstanding liability for which the department withholds a tax refund existing at the time the refund is issued.

(4) As provided in 15-30-2110(2)(u), a rebate provided for in this section is not taxable income.

(5) (a) As used in this section, the term "qualified taxpayer" means an individual who was a resident as defined in 15-30-2101 for the entire income tax year beginning January 1, 2021, and who filed a Montana individual income tax return for income tax years 2020 and 2021 by the due date for filing the return for income tax year 2021, including any extensions that have been granted.

(b) The term does not include:

(i) a taxpayer who is a nonresident, as defined in 15-30-2101, who filed tax returns in 2020 or 2021 pursuant to 15-30-2104;

(ii) an individual who was claimed as a dependent by another taxpayer for federal or Montana income tax purposes for the 2021 tax year; or

(iii) a trust.

**Section 3.** Section 15-30-2110, MCA, is amended to read:

"**15-30-2110. (Temporary) Adjusted gross income.** (1) Subject to subsection (15), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (16);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between

the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first $4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from an account established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; ~~and~~

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1*; and*

*(u) a tax rebate issued pursuant to [section 2].*

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base

used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of $3,000 or the amount of

the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed $5,000, from the taxpayer's adjusted gross income.

(15) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest $10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021; subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017; subsection (2)(s) terminates December 31, 2029--sec. 20, Ch. 480, L. 2021.)"

**Section 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: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; *[section 1];* 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws

of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 2].

**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. Coordination instruction.** (1) If [this act] is passed and approved and does not contain a $480 million transfer from the general fund, and if any of the five bills identified in subsection (2) are not passed and approved, then the amount of the transfer provided from the general fund in [section 1] is $240 million.

(2) The five bills are:

(a) House Bill No. 212;

(b) House Bill No. 221;

(c) House Bill No. 222;

(d) House Bill No. 251; and

(e) House Bill No. 267.

**Section 8. Effective date.** [This act] is effective on passage and approval.
**Section 9. Termination.** [This act] terminates December 31, 2025.

Approved March 13, 2023

# CHAPTER NO. 45

[HB 212]

AN ACT INCREASING THE CLASS EIGHT BUSINESS EQUIPMENT TAX EXEMPTION; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PROGRAM, TO SCHOOL DISTRICTS THROUGH GUARANTEED TAX BASE AID, AND TO THE MONTANA UNIVERSITY SYSTEM FOR THE LOSS OF REVENUE; AMENDING SECTIONS 15-1-123, 15-6-138, 15-10-420, AND 20-9-366, MCA; AMENDING SECTIONS 12 AND 13, CHAPTER 506, LAWS OF 2021; REPEALING SECTIONS 2, 6, 7, 8, AND 14, CHAPTER 506, LAWS OF 2021; AND PROVIDING AN APPLICABILITY DATE.

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

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

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

(2) For the increased exemption amount in 15-6-138(4) provided for in Chapter 506, Laws of 2021, the department shall reimburse each local government, as defined in 15-1-121(5), each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-109 the difference between property tax collections that would have been collected under 15-6-138 as amended by Chapter 506, Laws of 2021 and the property tax revenue that would have been collected under 15-6-138 if it had not been amended by Chapter 506, Laws of 2021. The difference calculated in this subsection is added to the annual reimbursable amount for each local government, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-109 calculated in subsection (1). The department shall lower the reimbursement to compensate for an increase in~~

~~property tax collections based on section 14, Chapter 506, Laws of 2021, during any tax year in which an increase in value occurs by the termination of an exemption due to the American Rescue Plan Act, Public Law 117-2, and section 14, Chapter 506, Laws of 2021.~~

~~(3) The growth rate applied to the reimbursements is:~~

~~(a) for the reimbursement calculated pursuant to subsection (1), one-half of the average rate of inflation for the prior 3 years; and~~

~~(b) for the reimbursement calculated pursuant to subsection (2), 0%.~~

~~(4) The department shall distribute the reimbursements calculated in subsections (1) and (2) to local governments with the entitlement share payments under 15-1-121(7).~~

~~(5) The amount determined under subsections (1) and (2) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.~~

~~(6) (a) The amount determined under subsections (1) and (2) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-109.~~

~~(b) The department of administration shall transfer the amount determined under this subsection (6) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-109. (Terminates December 31, 2025--sec. 13(5), Ch. 506, L. 2021.)~~

**15-1-123. ~~(Effective January 1, 2026)~~ Reimbursement for class eight rate reduction and exemption -- distribution -- appropriations.** (1) Except as provided in subsection (2), for the tax rate reductions in 15-6-138(3), the increased exemption amount in 15-6-138(4), the effective tax rate reductions on property under 15-6-145 because of the rate reductions required by the amendments of 15-6-138 in section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and the effective tax rate reductions on property under 15-6-145 because of the increased exemption amount required by the amendment of 15-6-138 in section 2, Chapter 396, Laws of 2013, the department shall reimburse each local government, as defined in 15-1-121(5), each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-109 the difference between property tax collections under 15-6-138 as amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013. The difference plus the amount calculated in subsection (2) is the annual reimbursable amount for each local government, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-109.

(2) For the increased exemption amount in 15-6-138(4) provided for in Chapter 506, Laws of 2021*, and [this act]*, the department shall reimburse each local government, as defined in 15-1-121(5), each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-109 the difference between property tax collections that would have been collected under 15-6-138 as amended by Chapter 506, Laws of 2021*, and [this act]* and the property tax revenue that would have been collected under 15-6-138 if it had not been amended by Chapter 506, Laws of 2021. The difference calculated in this subsection is added to the annual reimbursable amount for each local

government, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-109 calculated in subsection (1).

(3) The growth rate applied to the reimbursements is:

(a) for the reimbursement calculated pursuant to subsection (1), one-half of the average rate of inflation for the prior 3 years; and

(b) for the reimbursement calculated pursuant to subsection (2), 0%.

(4) The department shall distribute the reimbursements calculated in subsections (1) and (2) to local governments with the entitlement share payments under 15-1-121(7).

(5) The amount determined under subsections (1) and (2) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.

(6) (a) The amount determined under subsections (1) and (2) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-109.

(b) The department of administration shall transfer the amount determined under this subsection (6) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-109."

**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 15-6-207 or 15-6-220;~~

~~(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;~~

~~(c) for oil and gas production, all:~~

~~(i) machinery;~~

~~(ii) fixtures;~~

~~(iii) equipment, including flow lines and gathering lines, 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, and gas boosters, together with equipment that is skidable, portable, or movable;~~

~~(iv) tools that are not exempt under 15-6-219; and~~

~~(v) 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 15-6-220, 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 or that are rented under a purchase incentive rental program as defined in 15-6-202(4);~~

~~(f) special mobile equipment as defined in 61-1-101;~~

~~(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, the following definitions apply:~~

~~(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.~~

~~(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.~~

~~(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.~~

~~(3) Except as provided in 15-24-1402, class eight property is taxed at:~~

~~(a) for the first $6 million of taxable market value in excess of the exemption amount in subsection (4), 1.5%; and~~

~~(b) for all taxable market value in excess of $6 million, 3%.~~

~~(4) The first [$300,000] of market value of class eight property of a person or business entity is exempt from taxation.~~

~~(5) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold. (Bracketed language is temporarily amended to "$100,000" on occurrence of contingency for calendar years 2022, 2023, 2024, and 2025 until July 1, 2025--secs. 12(7) and 14, Ch. 506, L. 2021--see compiler's comment.)~~

**15-6-138. ~~(Effective July 1, 2025)~~ Class eight property -- description -- taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, 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, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) 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 15-6-220, 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 or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(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, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402, class eight property is taxed at:

(a) for the first $6 million of taxable market value in excess of the exemption amount in subsection (4), 1.5%; and

(b) for all taxable market value in excess of $6 million, 3%.

(4) The first ~~$300,000~~ *$1 million* of market value of class eight property of a person or business entity is exempt from taxation.

(5) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**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 newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.

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

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

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

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

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value~~:~~

~~(i)~~ — that arises because of an increase in the incremental value within a tax increment financing district~~; or~~

~~(ii) caused by the termination of an exemption that occurs due to the American Rescue Plan Act, Public Law 117-2, and section 14, Chapter 506, Laws of 2021~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) a governmental entity from levying mills for the support of an airport authority in existence prior to May 7, 2019, regardless of the amount of the levy imposed for the support of the airport authority in the past. The levy under this subsection (9)(a)(ix) is limited to the amount in the resolution creating the authority.

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

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

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable value in a governmental unit. ~~(Subsection (3)(b)(ii) terminates December 31, 2025--sec. 13(5), Ch. 506, L. 2021.)~~"

**Section 4.** 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' prior year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in

the previous year of all property in the district, except for property value disregarded because of protested taxes under 15-1-409(2) or property subject to the creation of a new school district under 20-6-326, divided by the district's prior year GTBA budget area.

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

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

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

(a) direct state aid;

(b) the total data-for-achievement payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment;

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

(g) the state special education allowable cost payment.

(5) (a) ~~Except as provided in subsection (6),~~ "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 ~~250% for fiscal year 2022 and~~ 254% for fiscal year ~~2023~~ *2024 and by 259% for fiscal year 2025* and each succeeding fiscal year and divided by the prior year statewide GTBA budget area for the state elementary school districts or the state high school districts. For fiscal year 2024 and subsequent fiscal years, the superintendent of public instruction shall increase the multiplier in this subsection (5)(a) as follows:

(i) for fiscal years 2024 through 2031, if the revenue transferred to the state general fund pursuant to 16-12-111 in the prior fiscal year is at least $1 million more than the revenue transferred in the fiscal year 2 years prior, then:

(A) multiply the amount of increased revenue transferred to the state general fund pursuant to 16-12-111 in the prior fiscal year above the amount of revenue transferred in the fiscal year 2 years prior by 0.25, divide the resulting product by $500,000, and round to the nearest whole number; and

(B) add the number derived in subsection (5)(a)(i)(A) as a percentage point increase to~~:~~

~~(I) if the prior year was not affected by a contingency under subsection (6),~~ the multiplier used for the prior fiscal year; ~~or~~

~~(II) if the prior year was affected by a contingency under subsection (6), the multiplier for the prior fiscal year had the prior fiscal year not been affected by a contingency under subsection (6);~~

(ii) for fiscal years 2024 through 2031, if the revenue transferred to the state general fund pursuant to 16-12-111 in the prior fiscal year is less than $1

million more than the revenue transferred in the fiscal year 2 years prior, then the multiplier is equal to:

~~(A) if the prior year was not affected by a contingency under subsection (6),~~ the multiplier used for the prior fiscal year; ~~or~~ *and*

~~(B) if the prior year was affected by a contingency under subsection (6), the multiplier for the prior fiscal year had the prior fiscal year not been affected by a contingency under subsection (6); and~~

(iii) for fiscal years 2032 and subsequent fiscal years, the multiplier is equal to the multiplier used for fiscal year 2031.

(b) "~~statewide~~*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' prior year total per-ANB entitlement amounts.

~~(6) The guaranteed tax base multiplier under subsection (5)(a) must be reduced by 4 percentage points following certification by the budget director of a contingency pursuant to Chapter 506, Laws of 2021:~~

~~(a) for fiscal year 2023 if the certification is made during calendar year 2021;~~

~~(b) for fiscal year 2024 if the certification is made during calendar year 2022;~~

~~(c) for fiscal year 2025 if the certification is made during calendar year 2023; and~~

~~(d) for fiscal year 2026 if the certification is made during calendar year 2024.~~"

**Section 5.** Section 12, Chapter 506, Laws of 2021, is amended to read:

**"Section 12. Effective dates – applicability.** (1) Except as provided in ~~subsections (2) through (7)~~ *subsection (2)*, [this act] is effective July 1, 2021.

~~(2) [Section 3] is effective January 1, 2026.~~

~~(3) [Section 4] is effective October 1, 2021, and applies to the tax year beginning after December 31, 2021.~~

~~(4)~~*(2)* [Section 5] is effective October 1, 2022, and applies to ~~the~~ tax ~~year~~ *years* beginning after December 31, 2022.

~~(5) [Section 6] is effective October 1, 2023, and applies to the tax year beginning after December 31, 2023.~~

~~(6) [Section 7] is effective October 1, 2024, and applies to the tax year beginning after December 31, 2024.~~

~~(7) [Section 8] is effective July 1, 2025, and applies to the tax years beginning after December 31, 2025.~~"

**Section 6.** Section 13, Chapter 506, Laws of 2021, is amended to read:

**"Section 13. Termination.** ~~(1)~~ [Section 4] terminates December 31, 2022.

~~(2) [Section 5] terminates December 31, 2023.~~

~~(3) [Section 6] terminates December 31, 2024.~~

~~(4) [Section 14] terminates January 1, 2025.~~

~~(5) [Sections 2, 7, and 9] terminates December 31, 2025.~~"

**Section 7. Repealer.** Sections 2, 6, 7, 8, and 14, Chapter 506, Laws of 2021, are repealed.

**Section 8. Coordination instruction.** (1) If [this act] is passed and approved and provides an exemption amount for class eight property of a person or business of more than $1 million in 15-6-138(4), and if any of the five bills identified in subsection (2) are not passed and approved, then the

exemption amount for class eight property of a person or business in 15-6-138(4) is $500,000.

(2) The five bills are:

(a) House Bill No. 192;

(b) House Bill No. 221;

(c) House Bill No. 222;

(d) House Bill No. 251; and

(e) House Bill No. 267.

**Section 9. Applicability.** [This act] applies to tax years beginning after December 31, 2023.

Approved March 13, 2023

# CHAPTER NO. 46

[HB 221]

AN ACT REVISING THE TAX RATES APPLICABLE TO NET LONG-TERM CAPITAL GAINS; AMENDING SECTIONS 15-30-2103 AND 15-30-2120, 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 15-30-2103, MCA, is amended to read:

"**15-30-2103. (Temporary) Rate of tax.** (1) Except as provided in 15-30-3704 there must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first $2,900 of taxable income or any part of that income, 1%;

(b) on the next $2,200 of taxable income or any part of that income, 2%;

(c) on the next $2,700 of taxable income or any part of that income, 3%;

(d) on the next $2,700 of taxable income or any part of that income, 4%;

(e) on the next $3,000 of taxable income or any part of that income, 5%;

(f) on the next $3,900 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $17,400 or any part of that income, [6.75%].

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section. (Bracketed language is temporarily amended to "6.9%" on occurrence of contingency for income tax years 2022 and 2023 until December 31, 2023--secs. 8, 10, Ch. 488, L. 2021--see compiler's comment.)

**15-30-2103. (Effective January 1, 2024) Rate of tax -- *net long-term capital gains -- definitions.*** (1) Except as provided in ~~15-30-3704 and subsection (2) of this section~~ *subsections (2) and (3)*, there must be levied, collected, and paid for each tax year ~~upon~~ *on* the Montana taxable income of each taxpayer subject to this chapter a tax on the brackets of taxable income as follows:

(a) for every married individual who files a joint return and for every surviving spouse:

(i) on the first $41,000 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $41,000 or any part of that income, 6.5%;

(b) for every head of household:

(i) on the first $30,750 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $30,750 or any part of that income, 6.5%;

(c) for every individual other than a surviving spouse or head of household who is not a married individual:

(i) on the first $20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $20,500 or any part of that income, 6.5%;

(d) for every married individual who does not make a joint return and for every estate or trust not exempt from taxation under the Internal Revenue Code:

(i) on the first $20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $20,500 or any part of that income, 6.5%.

*(2) Except as provided in 15-30-3704 and subsection (3) of this section, that portion of a taxpayer's Montana taxable income that consists of net long-term capital gains after accounting for amounts included in taxable income that is not net long-term capital gains is subject to a tax on the brackets of net long-term capital gains as follows:*

*(a) for every married individual who files a joint return and for every surviving spouse:*

*(i) on the first $41,000 less nonqualified taxable income of net long-term capital gains, 3.0%;*

*(ii) on net long-term capital gains that exceed $41,000 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is $41,000 or greater, all of the net long-term capital gains are taxed at 4.1%;*

*(b) for every head of household:*

*(i) on the first $30,750 less nonqualified taxable income of net long-term capital gains, 3.0%;*

*(ii) on any net long-term capital gains that exceed $30,750 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is $30,750 or greater, all of the net long-term capital gains are taxed at 4.1%;*

*(c) for every individual other than a surviving spouse or head of household who is not a married individual:*

*(i) on the first $20,500 less nonqualified taxable income of net long-term capital gains, 3.0%;*

*(ii) on any net long-term capital gains that exceed $20,500 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is $20,500 or greater, all of the net long-term capital gains are taxed at 4.1%;*

*(d) for every married individual who does not make a joint return and for every estate or trust that is not exempt from taxation under the Internal Revenue Code:*

*(i) on the first $20,500 less nonqualified taxable income of net long-term capital gains, 3.0%;*

*(ii) on any net long-term capital gains that exceed $20,500 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is $20,500 or greater, all of the net long-term capital gains are taxed at 4.1%.*

~~(2)~~*(3)* By November 1 of each year, the department shall multiply the bracket amounts contained in ~~subsection~~ *subsections* (1) *and (2)* by the inflation factor for the following tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in ~~subsection~~ *subsections* (1) *and (2).*

*(4) For the purposes of this section, the following definitions apply:*

*(a) "Net long-term capital gains" means net long-term capital gains as that term is defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222.*

*(b) "Nonqualified taxable income" means Montana taxable income that is not considered net long-term capital gains.*"

**Section 2.** Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the

amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through ~~(3)(m)~~ *(3)(l)*;

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; *and*

~~(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; and~~

~~(m)~~*(l)* the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000,

for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

**Section 3. Effective date.** [This act] is effective January 1, 2024.

**Section 4. Coordination instruction.** (1) If [this act] is passed and approved and does not contain the percentages of 4.1% and 3.0% in the amended portion of [section 1] of [this act], and if any of the five bills identified in subsection (2) are not passed and approved, then the percentage of 4.1% in the introduced version of [this act] is replaced with 4.5% and the percentage of 3.0% in the introduced version of [this act] is replaced with 3.5% throughout [section 1] of [this act].

(2) The five bills are:

(a) House Bill No. 192;

(b) House Bill No. 212;

(c) House Bill No. 222;

(d) House Bill No. 251; and

(e) House Bill No. 267.

**Section 5. Applicability.** [This act] applies to tax years beginning after December 31, 2023.

Approved March 13, 2023

# CHAPTER NO. 47

[HB 222]

AN ACT PROVIDING FOR A PROPERTY TAX REBATE ON A PRINCIPAL RESIDENCE BASED ON A CERTAIN AMOUNT OF PROPERTY TAXES PAID; PROVIDING A REBATE OF PROPERTY TAXES UP TO $500 A YEAR FOR TAX YEARS 2022 AND 2023 FOR A PRINCIPAL RESIDENCE THAT WAS OCCUPIED BY THE TAXPAYER; PROVIDING A PENALTY FOR FALSE OR FRAUDULENT CLAIMS; PROVIDING DEFINITIONS; PROVIDING THAT THE PROPERTY TAX REBATE IS NOT SUBJECT TO THE MONTANA INDIVIDUAL INCOME TAX; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-2110, 15-30-2120, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Montana property taxes" means the ad valorem property taxes, special assessments, and other fees imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed and paid by the taxpayer as follows:

(a) for tax year 2022, the amount of Montana property taxes assessed and paid is equal to the total amount billed by the local government for the dwelling as shown on the 2022 property tax bill received by the taxpayer with a first-half payment due in or around November 2022 and a second-half payment due in or around May 2023; and

(b) for tax year 2023, the amount of Montana property taxes assessed and paid is equal to the total amount billed by the local government for the dwelling as shown on the 2023 property tax bill received by the taxpayer with a first-half payment due in or around November 2023 and a second-half payment due in or around May 2024.

(2) "Owned" includes purchasing under a contract for deed and being the grantor or grantors under a revocable trust indenture.

(3) (a) "Principal residence" is, subject to the provisions of subsection (3)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer owned and lived in for at least 7 months of the year for which the rebate is claimed;

(ii) that is the only residence for which the property tax rebate is claimed; and

(iii) for which the taxpayer made payment of the assessed Montana property taxes during tax year 2022 and tax year 2023.

(b) A taxpayer that cannot meet the requirements of subsection (3)(a)(i) because the taxpayer's principal residence changes during the tax year to another principal residence may still claim a rebate if the taxpayer paid the Montana property taxes while residing in each principal residence for a total of at least 7 consecutive months for each tax year.

(4) "Tax year 2022" means the period January 1, 2022, through December 31, 2022.

(5) "Tax year 2023" means the period January 1, 2023, through December 31, 2023.

**Section 2. Property tax rebate -- manner of claiming -- limitations -- appropriation.** (1) Subject to the conditions provided for in [sections 1 through 3], there is a rebate of Montana property taxes in the amount of:

(a) $500 or the amount of total property taxes paid, whichever is less, for tax year 2022; and

(b) $500 or the amount of total property taxes paid, whichever is less, for tax year 2023.

(2) The rebate provided for in subsection (1) is for Montana property taxes assessed to and paid by a taxpayer or taxpayers on property they owned and occupied as a principal residence during the relevant tax year.

(3) The department shall mail a notice to potential claimants by June 30, 2023, for tax year 2022 and by June 30, 2024, for tax year 2023. Receipt of a notice does not establish that a taxpayer or property owner is eligible for a rebate, and a taxpayer who does not receive a notice may still be eligible to claim a rebate. All taxpayers, regardless of the receipt of notice, shall claim a rebate as provided in subsection (5).

(4) Except as provided in subsections (5)(c) and (5)(d), a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or

mobile home and as much of the surrounding land, not exceeding 1 acre that is owned by an entity is not eligible to claim the rebate.

(5) (a) All claims for this property tax rebate must be submitted to the department electronically or by mail for each tax year the rebate is claimed.

(i) Electronic claims must be submitted between August 15 and October 1 each year through the department's website.

(ii) Claims submitted by mail must be made on a form prescribed by the department and postmarked by October 1 each year.

(b) Subject to subsections (5)(c) and (5)(d), a claim for rebate must be submitted, under penalty of false swearing and the penalties provided in [section 3], on a form prescribed by the department and must contain:

(i) an affirmation that the claimant owns and maintains the land and improvements as the principal residence as defined in [section 1];

(ii) the geocode or other property identifier for the principal residence that the claimant is requesting the rebate on;

(iii) the social security number of the claimant, the claimant's spouse, and any dependents; and

(iv) any other information as required by the department that is relevant to the claimant's eligibility.

(c) The personal representative of the estate of a deceased taxpayer may execute and file the claim for rebate on behalf of a deceased taxpayer who qualifies for the rebate.

(d) The trustee of a grantor revocable trust may file a claim on behalf of the trust if the dwelling meets the definition of a principal residence for the grantor.

(6) Only one rebate for each tax year will be issued to a taxpayer for the Montana property taxes paid by the taxpayer for tax year 2022 and tax year 2023.

(7) If a debt is due and owing to the state, the department may offset the rebate in this section as provided in sections 15-30-2629, 15-30-2630, 17-4-105, or as otherwise provided by law.

(8) The payment of property tax rebates and administration costs related to paying property tax refunds under this section are statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue for distribution to taxpayers and for related administration costs.

**Section 3. Property tax rebate -- penalty for false or fraudulent claim.** (1) Except as provided in subsection (2), if the department discovers that a rebate paid to a taxpayer exceeded the amount allowed by [sections 1 through 3], the department may, within 1 year from the date the rebate was transmitted to the taxpayer, assess the taxpayer for the difference. The assessment is subject to the uniform dispute review procedure established in 15-1-211.

(2) A person who files a false or fraudulent claim for a property tax rebate under [sections 1 through 3] is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid by the department, the amount paid may be recovered as any other tax owed the state, together with a penalty of 300% of the rebate claimed and interest on the amount of the rebate claimed plus penalty at the rate of 12% a year, until paid. If this rebate plus penalty becomes due and owing, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

**Section 4.** Section 15-30-2110, MCA, is amended to read:

"**15-30-2110. (Temporary) Adjusted gross income.** (1) Subject to subsection (15), adjusted gross income is the taxpayer's federal adjusted gross

income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (16);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first $4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from an account established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; ~~and~~

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1*; and*

*(u) the amount of the property tax rebate received under [section 2].*

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the

Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed $5,000, from the taxpayer's adjusted gross income.

(15) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest $10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021; subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017; subsection (2)(s) terminates December 31, 2029--sec. 20, Ch. 480, L. 2021.)"

**Section 5.** Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through ~~(3)(m)~~ *(3)(n)*;

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person

was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; ~~and~~

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163*; and*

*(n) the amount of the property tax rebate received under [section 2].*

(4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

**Section 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: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; *[section 2];* 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs.

1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 7. Codification instruction.** [Sections 1 through 3] are intended to be codified as a new part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [sections 1 through 3].

**Section 8. Coordination instruction.** (1) If [this act] is passed and approved and does not provide for a property tax rebate of $500, and if any of the five bills identified in subsection (2) are not passed and approved, then the amount of the property tax rebate in [section 2] in [this act] is reduced by $250.

(2) The five bills are:

(a) House Bill No. 192;

(b) House Bill No. 212;

(c) House Bill No. 221;

(d) House Bill No. 251; and

(e) House Bill No. 267.

**Section 9. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective January 1, 2024.

**Section 10. Termination.** [This act] terminates June 30, 2025.

Approved March 13, 2023

# CHAPTER NO. 48

[HB 251]

AN ACT REVISING STATE FINANCE LAWS; CREATING THE DEBT AND LIABILITY FREE ACCOUNT; PROVIDING FOR A TRANSFER AND ALLOCATIONS OF INTEREST INTO THE DEBT AND LIABILITY FREE ACCOUNT; PROVIDING A TRANSFER TO THE STATEWIDE PUBLIC SAFETY COMMUNICATIONS SYSTEM ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; PROVIDING FOR AN EQUAL TRANSFER OF UNOBLIGATED FUNDS FROM THE DEBT AND LIABILITY FREE ACCOUNT TO THE CAPITAL DEVELOPMENTS LONG-RANGE BUILDING PROGRAM ACCOUNT AND THE GENERAL FUND IN 2027; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTIONS 17-6-202, 17-7-502, AND 44-4-1607, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, there is a benefit to the citizens of Montana to pay off debts and be debt free in 2023; and

WHEREAS, paying off debts and other financial liabilities of the State of Montana is a responsible use of one-time funds; and

WHEREAS, issuing and paying off public debt when prudent is and should remain a standard function of state government; and

WHEREAS, paying off debt now allows more capacity to responsibly pay for capital expenditures via financing in the future, when desired by the Executive and Legislature.

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

**Section 1. Debt and liability free account -- rules for deposits and transfers -- purpose.** (1) There is an account in the state special revenue fund established by 17-2-102 known as the debt and liability free account.

(2) The purpose of the debt and liability free account is to:

(a) pay the principal, interest, premiums, and any costs or fees associated with redeeming outstanding bonds, notes, or other obligations that have been authorized and issued pursuant to the laws of Montana and that are currently subject to optional redemption;

(b) pay the principal, interest, premiums, and any costs or fees associated with defeasing outstanding bonds, notes, or other obligations that have been authorized and issued pursuant to the laws of Montana that are not currently subject to optional redemption;

(c) forego or reduce the amount of an issuance of general obligation bonds paid from the general fund authorized by the legislature but not yet issued by the board of examiners prior to using funds from the account established in 17-7-209 for the same purpose; and

(d) pay in whole or in part legally resolved nonpension financial liabilities of the state of Montana.

(3) For the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, interest income received pursuant to 17-6-202(2) is deposited into the account.

(4) Funds in the debt and liability free account are statutorily appropriated, as provided in 17-7-502, to the governor's office of budget and program planning and must be used in accordance with the requirements of this section.

(5) Funds expended from the account in this section may not be included in the calculation of annual transfers in 17-7-208.

(6) The office of budget and program planning shall prioritize the use of funds for the uses outlined in subsections (1)(a) through (1)(c).

(7) Within 15 days of the close of each fiscal quarter, the office of budget and program planning shall submit a written report to the legislative finance committee in accordance with 5-11-210 that identifies the amount and the type of debt payoff or other expenditure from the account established in this section for the previous fiscal quarter.

**Section 2.** Section 17-6-202, MCA, is amended to read:

"**17-6-202. Investment funds -- general provisions.** (1) For each treasury fund account into which state funds are segregated by the department of administration pursuant to 17-2-106, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department.

(2) However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest, or devise from which the fund account originates to be invested shall be pooled in an account to be designated "treasury cash account" and placed in one of the investment funds designated in 17-6-203. ~~The~~ *Except for the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, the* share of the income for this account shall be credited to the general fund. *For the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, the share of the income for this account must be credited to the debt and liability free account established in [section 1].*

(3) If, within the list in 17-6-203 of separate investment funds, more than one investment fund is included which may be held jointly with others

under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata."

**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: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; *[section 1];* 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and *any* costs ~~of~~ *or fees associated with* issuing, paying, ~~and~~ securing*, redeeming, or defeasing* all bonds, notes, or other obligations, as due *in the ordinary course or when earlier called for redemption or defeased*, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the

inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 4.** Section 44-4-1607, MCA, is amended to read:

"**44-4-1607. Statewide public safety communications system account.** (1) There is an account in the state special revenue fund established in 17-2-102 to be known as the statewide public safety communications system account.

(2) There must be deposited in the account:

(a) money received from legislative allocations and general fund transfers;

(b) a transfer of money from a state or local agency for the purposes of this part;

(c) rates, charges, or fees collected by the department in accordance with 44-4-1606(3)(h);

(d) funds accepted in accordance with 44-4-1606(3)(i) and (3)(j); and

(e) a gift, donation, grant, legacy, bequest, or devise made for the purposes of this part.

(3) There is an account in the federal special revenue fund established in 17-2-102 to be known as the statewide public safety communications system account. There must be deposited in the account money received from the federal government for the purposes of this part.

(4) For each fiscal year beginning July 1, 2019, and ending June 30, ~~2029~~ *2023*, there is transferred $3.75 million from the state general fund to the state special revenue account provided for in this section.

(5) Funds in either account created in this section must be used by the department for the purposes of this part."

**Section 5. Transfer of funds.** (1) By June 30, 2023, the state treasurer shall transfer $125 million from the general fund to the account provided for in [section 1].

(2) By June 30, 2023, the state treasurer shall transfer $18.6 million from the general fund to the statewide public safety communications system account provided for in 44-4-1607.

(3) By June 30, 2027, the state treasurer shall transfer any unobligated funds in the account established in [section 1] as follows:

(a) 50% to the capital developments long-range building program account established in 17-7-209; and

(b) 50% to the general fund.

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, and the provisions of Title 17, chapter 6, apply to [section 1].

**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. Coordination instruction.** (1) If [this act] is passed and approved and does not contain a $125 million transfer in [section 5(1)], and if any of the five bills identified in subsection (2) are not passed and approved, then the transfer amount in [section 5(1)] of [this act] is $62.5 million.

(2) The five bills are:

(a) House Bill No. 192;

(b) House Bill No. 212;

(c) House Bill No. 221;

(d) House Bill No. 222; and

(e) House Bill No. 267.

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

**Section 10. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to funds collected pursuant to 17-6-202(2) on or after July 1, 2022.

Approved March 13, 2023

# CHAPTER NO. 49

[HB 267]

AN ACT CREATING THE SECURING ACCESS TO FEDERAL EXPENDITURES TO REPAIR MONTANA ROADS AND BRIDGES ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, state and federal stewardship is necessary for the maintenance of Montana's highway system; and

WHEREAS, creating the Securing Access to Federal Expenditures to Repair (SAFER) Montana Roads and Bridges Account will promote safe road transportation across the state; and

WHEREAS, establishing the SAFER account as a stable funding source for state match dollars will allow access to one-time-only federal grant opportunities awarded to the state.

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

**Section 1. Securing access to federal expenditures to repair Montana roads and bridges.** There is a securing access to federal expenditures to repair Montana roads and bridges account in the state special revenue fund provided for in 17-2-102.

(1) Funds in this account are statutorily appropriated, as provided in 17-7-502, to the department of transportation for:

(a) providing state match for additional federal funds allocated to the department through federal redistribution; and

(b) providing state match for discretionary grants awarded to the department.

(2) (a) Total expenditures for state match authorized under this section may not exceed $15 million in a fiscal year.

(b) Expenditures made pursuant to this section must be for construction and reconstruction prioritized by the transportation commission pursuant to 60-2-110.

**Section 2.** Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; *[section 1];* 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027;

pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 3. Transfer of funds.** Before June 30, 2023, the state treasurer shall transfer $100 million from the general fund to the securing access to federal expenditures to repair Montana roads and bridges account provided for in [section 1].

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply to [section 1].

**Section 5. Coordination instruction.** (1) If [this act] is passed and approved and does not contain a $100 million transfer from the general fund, and if any of the five bills identified in subsection (2) are not passed and approved, then the amount of the transfer from the general fund in [this act] is $50 million.

(2) The five bills are:

(a) House Bill No. 192;

(b) House Bill No. 212;

(c) House Bill No. 221;

(d) House Bill No. 222; and

(e) House Bill No. 251.

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved March 13, 2023

# CHAPTER NO. 50

[SB 121]

AN ACT REVISING INDIVIDUAL INCOME TAX LAWS; REDUCING THE TOP MARGINAL INDIVIDUAL INCOME TAX RATE; INCREASING THE EARNED INCOME TAX CREDIT; AMENDING SECTIONS 15-30-2103 AND 15-30-2318, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2103, MCA, is amended to read:

"**15-30-2103. (Temporary) Rate of tax.** (1) Except as provided in 15-30-3704 there must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for

exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first $2,900 of taxable income or any part of that income, 1%;

(b) on the next $2,200 of taxable income or any part of that income, 2%;

(c) on the next $2,700 of taxable income or any part of that income, 3%;

(d) on the next $2,700 of taxable income or any part of that income, 4%;

(e) on the next $3,000 of taxable income or any part of that income, 5%;

(f) on the next $3,900 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $17,400 or any part of that income, [6.75%].

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section. (Bracketed language is temporarily amended to "6.9%" on occurrence of contingency for income tax years 2022 and 2023 until December 31, 2023--secs. 8, 10, Ch. 488, L. 2021--see compiler's comment.)

**15-30-2103. (Effective January 1, 2024) Rate of tax.** (1) Except as provided in 15-30-3704 and subsection (2) of this section, there must be levied, collected, and paid for each tax year upon the Montana taxable income of each taxpayer subject to this chapter a tax on the brackets of taxable income as follows:

(a) for every married individual who files a joint return and for every surviving spouse:

(i) on the first $41,000 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $41,000 or any part of that income, ~~6.5%~~ *5.9%*;

(b) for every head of household:

(i) on the first $30,750 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $30,750 or any part of that income, ~~6.5%~~ *5.9%*;

(c) for every individual other than a surviving spouse or head of household who is not a married individual:

(i) on the first $20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $20,500 or any part of that income, ~~6.5%~~ *5.9%*;

(d) for every married individual who does not make a joint return and for every estate or trust not exempt from taxation under the Internal Revenue Code:

(i) on the first $20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of $20,500 or any part of that income, ~~6.5%~~ *5.9%*.

(2) By November 1 of each year, the department shall multiply the bracket amounts contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1)."

**Section 2.** Section 15-30-2318, MCA, is amended to read:

"**15-30-2318. Earned income tax credit.** (1) Except as provided in subsection (3), a resident taxpayer is allowed as a credit against the tax imposed by 15-30-2103 a percentage of the credit allowed for the federal earned income credit for which the individual taxpayer is eligible for the tax year under section 32 of the Internal Revenue Code, 26 U.S.C. 32.

(2) The amount of the credit allowed under subsection (1) is ~~3%~~ *10%* of the amount of the credit determined for the tax year under section 32 of the Internal Revenue Code, 26 U.S.C. 32.

(3) (a) Except for married taxpayers living apart who are treated as single under section 7703(b) of the Internal Revenue Code, 26 U.S.C. 7703(b), the credit is not allowed to married taxpayers if the spouses report their income on separate tax forms. Married taxpayers filing separately on the same form may allocate the credit between spouses.

(b) The credit is not allowed on earned income that is treated as a dividend received by a member of an agricultural organization provided for in section 501(d) of the Internal Revenue Code, 26 U.S.C. 501(d). For the purpose of this subsection (3)(b), the amount of the state tax credit provided for in subsection (2) is reduced by the reduction percentage.

(4) The taxpayer is entitled to a refund equal to the amount by which the credit exceeds the taxpayer's tax liability or, if the taxpayer has no tax liability under this chapter, a refund equal to the amount of the credit. The credit may be claimed by filing a Montana income tax return.

(5) For the purpose of this section, the following definitions apply:

(a) "Earned income" means earned income, as defined in section 32 of the Internal Revenue Code, 26 U.S.C. 32, that was used to determine the amount of the federal earned income tax credit under subsection (2).

(b) "Reduction percentage" means a percentage that is calculated by dividing the earned income that is disallowed under subsection (3)(b) by the total amount of earned income."

**Section 3. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective January 1, 2024.

**Section 4. Applicability.** [This act] applies to income tax years beginning after December 31, 2023.

Approved March 13, 2023

# CHAPTER NO. 51

[SB 124]

AN ACT REVISING APPORTIONMENT OF INCOME FOR PURPOSES OF MONTANA'S CORPORATE INCOME TAX; ADOPTING A SINGLE-SALES FACTOR APPORTIONMENT MODEL FOR PURPOSES OF MONTANA'S CORPORATE INCOME TAX; AMENDING SECTIONS 15-1-601, 15-30-2104, 15-30-3313, 15-31-122, 15-31-310, 15-31-311, 15-31-312, 15-31-403, AND 15-31-406, MCA; REPEALING SECTIONS 15-31-306, 15-31-307, 15-31-308, AND 15-31-309, 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 15-1-601, MCA, is amended to read:

"**15-1-601. Compact adopted -- text.** The Multistate Tax Compact is enacted into law and entered into with all jurisdictions legally joining in the

compact, in the form substantially as set forth in this section. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) *"capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;*

*(2) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;*

*(3) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;*

*(4) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;*

*(5)* "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

~~(2)~~*(6)* "subdivision" means any government unit or special district of a state;

*(7) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.*

~~(3)~~*(8)* "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

~~(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;~~

~~(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;~~

~~(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;~~

~~(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;~~

~~(8)~~*(9)* "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax~~;~~

~~(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV~~.

Article III. Elements ~~Of~~ *of* Income Tax Laws

Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division ~~Of~~ *of* Income

(1) As used in this article, unless the context otherwise requires:

(a) "apportionable income" means:

(i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) income arising from transactions and activity in the regular course of the taxpayer's trade or business, and

(B) income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) any income that would be allocable to this state under the Constitution of the United States but that is apportioned rather than allocated pursuant to the laws of this state;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

~~(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;~~

~~(d)~~*(c)* "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

~~(e)~~*(d)* "nonapportionable income" means all income other than apportionable income;

~~(f)~~*(e)* "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

~~(g)~~*(f)* "receipts" means all gross receipts of the taxpayer that are not allocated under paragraphs of this article and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities shall be excluded;

~~(h)~~*(g)* "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

~~(i)~~*(h)* "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion the taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not do so.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonapportionable income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright

royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All apportionable income shall be apportioned to this state by multiplying the income by ~~a fraction, the numerator of which is the property factor plus the payroll factor plus two times the receipts factor and the denominator of which is 4~~ *the receipts factor*.

~~(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

~~(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~

~~(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~

~~(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~

~~(14) Compensation is paid in this state if:~~

~~(a) the individual's service is performed entirely within the state;~~

~~(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~

~~(c) some of the service is performed in the state and:~~

~~(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or~~

~~(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

~~(15)~~*(10)* The receipts factor is a fraction, the numerator of which is the total receipts of the taxpayer in this state during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

~~(16)~~*(11)* Receipts from the sale of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

~~(17)~~*(12)* (a) Receipts, other than receipts described in subsection ~~(16)~~ *(11)*, are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(i) in the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

(ii) in the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(iii) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(iv) in the case of intangible property:

(A) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(B) that is sold, if and to the extent the property is used in this state, provided that:

(I) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(II) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subsection ~~(17)(a)(iv)(A)~~ *(12)(a)(iv)(A)*; and

(III) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(b) If the state or states of assignment under subsection ~~(17)(a)~~ *(12)(a)* cannot be determined, the state or states of assignment shall be reasonably approximated.

(c) If the taxpayer is not taxable in a state to which a receipt is assigned under subsection ~~(17)(a)~~ *(12)(a)* or ~~(17)(b)~~ *(12)(b)*, or if the state of assignment cannot be determined under subsection ~~(17)(a)~~ *(12)(a)* or reasonably approximated under subsection ~~(17)(b)~~ *(12)(b)*, such receipt shall be excluded from the denominator of the receipts factor.

(d) The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

~~(18)~~*(13)* (a) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;

(ii) the exclusion of any one or more of the factors;

(iii) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) (i) If the allocation and apportionment provisions of this article do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section ~~(18)(a)~~ *(13)(a)*, establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.

(ii) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to subsection ~~(18)(a)~~ *(13)(a)*.

(c) (i) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection ~~(18)(a)~~ *(13)(a)* must prove by a preponderance of the evidence:

(A) that the allocation and apportionment provisions of this ~~Article~~ *article* do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) that the alternative to such provisions is reasonable.

(ii) The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. Notwithstanding the previous sentence, if the tax administrator can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the tax administrator shall not bear the burden of proof in imposing a different method pursuant to ~~(18)(a)~~ *(13)(a)*.

(d) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this article.

(e) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied.

Article V. Elements ~~Of~~ *of* Sales ~~And~~ *and* Use Tax Laws

Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates -- Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission

Organization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a presiding officer, a vice presiding officer, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the presiding officer, vice presiding officer, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of

concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection *(4)(b)*.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations ~~And~~ *and* Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state

in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated

with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless the member is required on account of the service to forego the regular compensation attaching to the member's public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force ~~And~~ *and* Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect ~~On~~ *on* Other Laws ~~And~~ *and* Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction ~~And~~ *and* Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

**Section 2.** Section 15-30-2104, MCA, is amended to read:

"**15-30-2104. (Temporary) Tax on nonresident.** (1) (a) A tax is imposed ~~upon~~ *on* each nonresident equal to the tax computed under 15-30-2103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of ~~the Multistate Tax Compact~~ *15-1-601*, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections ~~16~~ *11* and ~~17~~ *12*, of ~~the Multistate Tax Compact~~ *15-1-601*.

**15-30-2104. (Effective January 1, 2024) Tax on nonresident.** (1) (a) A tax is imposed ~~upon~~ *on* each nonresident individual, estate, or trust

equal to the tax computed under 15-30-2103 as if the nonresident individual, estate, or trust were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of ~~the Multistate Tax Compact~~ *15-1-601*, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections ~~16~~ *11* and ~~17~~ *12*, of ~~the Multistate Tax Compact~~ *15-1-601*."

**Section 3.** Section 15-30-3313, MCA, is amended to read:

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

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

(i) file a composite return;

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

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

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

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

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

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

(i) file a composite return;

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

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

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

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

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

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

(i) file a composite return; or

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

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

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

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

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

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

(7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and

withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection *(7)(a)* does not relieve a person or entity from its obligation to pay Montana income taxes.

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

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

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

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

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

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

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

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

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

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

(9) Nothing in this section may be construed as modifying the provisions of Article IV,~~(18)~~ *subsection (13),* of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state.

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

**Section 4.** Section 15-31-122, MCA, is amended to read:

"**15-31-122. Alternative gross sales tax.** Pursuant to the provisions of Article III, section 2, of ~~the Multistate Tax Compact~~ *15-1-601*, every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay

a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under 15-31-101 and 15-31-121. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections ~~16~~ *11* and ~~17~~ *12*, of ~~the Multistate Tax Compact~~ *15-1-601*."

**Section 5.** Section 15-31-310, MCA, is amended to read:

"**15-31-310. Definition of receipts factor.** The receipts factor is provided for in Article IV, subsection ~~(15)~~ *(10)*, of 15-1-601."

**Section 6.** Section 15-31-311, MCA, is amended to read:

"**15-31-311. Receipts factor for receipts in this state.** (1) Receipts from the sale of tangible personal property are in this state as provided for in Article IV, subsection ~~(16)~~ *(11)*, of 15-1-601.

(2) Receipts, other than receipts provided for in subsection (1), are in this state as provided for in Article IV, subsection ~~(17)~~ *(12)*, of 15-1-601."

**Section 7.** Section 15-31-312, MCA, is amended to read:

"**15-31-312. Apportionment formula -- unitary business provisions.** (1) If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting, provided the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state; or

(b) the application of the provisions of Article IV, subsections ~~(18)(a)(ii)~~ *(13)(a)(ii)* through ~~(18)(a)(iv)~~ *(13)(a)(iv)*, of 15-1-601.

(2) If the allocation and apportionment provisions of this part do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, Article IV, subsection ~~(18)(b)~~ *(13)(b)*, of 15-1-601 applies."

**Section 8.** Section 15-31-403, MCA, is amended to read:

"**15-31-403. Rate of tax imposed -- income from sources within state defined -- alternative tax.** (1) Except as provided in 15-31-401, there is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 15-31-121 and 15-31-122 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under part 1 of this chapter, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of ~~the Multistate Tax Compact~~ *15-1-601*, any corporation required to file a return under this part and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may

elect to pay a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections ~~16~~ *11* and ~~17~~ *12*, of ~~the Multistate Tax Compact~~ *15-1-601*."

**Section 9.** Section 15-31-406, MCA, is amended to read:

"**15-31-406. Corporate income tax sections incorporated by reference.** The provisions of the following sections of this chapter are incorporated into this part by reference and made a part of this part:

(1) that part of 15-31-101 that defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income may not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through *15-31-305, 15-31-310 through* 15-31-313, 15-31-501 through 15-31-506, 15-31-509, 15-31-511, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543, except that the term "gross income" must be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "corporate income tax", "license tax", "license fee", "corporation excise tax", or similar words appear, referring to the tax imposed under part 1 of this chapter, there is substituted the words "alternative corporate income tax"."

**Section 10. Repealer.** The following sections of the Montana Code Annotated are repealed:

15-31-306. Definition of property factor.
15-31-307. Values used for property factor.
15-31-308. Definition of payroll factor.
15-31-309. Payroll factor for compensation in this state.

**Section 11. Effective date.** [This act] is effective January 1, 2025.

**Section 12. Applicability.** [This act] applies to tax years beginning after December 31, 2024.

Approved March 13, 2023

# CHAPTER NO. 52

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2023; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Time limits.** The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2023. The unspent balance of any appropriation must revert to the appropriate fund.

**Section 2. Appropriations -- authorization to expend money.** The following money is appropriated, subject to the terms and conditions of [section 1]:

| Agency and Program | Amount | Fund |
|---|---|---|
| Department of Revenue | | |
| Alcoholic Beverage Control Division | $152,000 | Proprietary Fund |
| Cannabis Control Division | $1,761,711 | State Special |
| Department of Military Affairs | | |
| Director's Office | $40,925 | General Fund |

| | | |
|---|---|---|
| NG Scholarship Program | $80,248 | General Fund |
| Air National Guard | $22,715 | General Fund |
| Department of Justice | | |
| Montana Highway Patrol | $2,600,000 | General Fund |
| Legal Services Division | $305,779 | General Fund |
| Litigation Costs | $2,835,000 | General Fund |
| Office of Public Defender | | |
| Conflict Division | $4,500,000 | General Fund |
| Department of Corrections | | |
| Public Safety Division | $1,861,056 | General Fund |
| Office of Public Instruction | | |
| State Level Activities | $86,000 | General Fund |
| Montana Arts Council | | |
| Promotion of the Arts | $54,000 | General Fund |
| Legislative Services Division | | |
| Office of Legislative Information Services | $113,941 | General Fund |
| Montana Historical Society | | |
| Administration Program | $107,362 | General Fund |

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

Approved March 15, 2023

# CHAPTER NO. 53

[HB 31]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATED TO ACADEMIC BREWER LICENSES; ALLOWING A UNIT OF THE MONTANA UNIVERSITY SYSTEM OR A MONTANA COMMUNITY COLLEGE THAT IS PART OF A COMMUNITY COLLEGE DISTRICT THE ABILITY TO APPLY FOR AN ACADEMIC BREWER LICENSE; DEFINING POSTSECONDARY INSTITUTION; AMENDING SECTION 16-4-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-4-314, MCA, is amended to read:

"**16-4-314. Academic brewer license under small brewer exception ~~-- Flathead valley community college or Montana state university-Billings~~ -- conditions.** (1) ~~Flathead valley community college or Montana state university-Billings~~ *A postsecondary institution* may apply for an academic brewer license under this section that allows the licensee to brew and sell beer to wholesalers as provided in this section. The academic brewer license:

(a) does not allow for the sale of beer at retail and does not allow for the operation of a sample room as provided in 16-3-213;

(b) is limited to production of 10,000 barrels annually;

(c) allows for distribution only to wholesalers as provided in 16-3-214;

(d) is under the ownership of ~~Flathead valley community college or Montana state university-Billings~~ *a postsecondary institution*;

~~(e) is not subject to quotas under 16-4-105 or to the provisions of 16-3-306;~~

~~(f) may not offer gambling activities;~~

*(e) may not offer gambling activities;*

~~(g)~~*(f)* is otherwise subject to laws applying to brewery licenses as provided in this code; and

~~(h)~~*(g)* must operate in an on-campus facility operated ~~in conjunction with a beer-brewing class or curriculum taught at the community college or Montana state university-Billings~~ *in conjunction with a beer-brewing class or curriculum taught at the postsecondary institution or in conjunction with research at the postsecondary institution*.

(2) When ~~Flathead valley community college or Montana state university-Billings~~ *a postsecondary institution* has met the conditions in subsection (3) and has paid the fee specified for a brewer under 16-4-501, the department shall issue the academic brewer license.

(3) To obtain a license under this section, ~~Flathead valley community college or Montana state university-Billings~~ *a postsecondary institution* shall:

(a) document approval by the ~~community college district~~ *postsecondary institution's* board of trustees or the board of regents of higher education, as applicable;

(b) identify the on-campus location of the site where classes in beer making are to be held *or where research is to take place*; and

(c) for criminal background requirements under 16-4-414, designate two or more individuals, each of whom must have responsibility for licensing compliance and each of whom must meet the requirements in 16-4-401(4)(a).

*(4) For the purposes of this section, the term "postsecondary institution" means:*

*(a) a unit of the Montana university system as described in 20-25-201; or*

*(b) a Montana community college that is part of a community college district as defined in 20-15-101.*

~~(4)~~*(5)* The department may adopt rules to implement this section."

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

Approved March 16, 2023

# CHAPTER NO. 54

[HB 41]

AN ACT EXPANDING INCUMBENT WORKER TRAINING ELIGIBILITY AND AWARDS; REVISING DEFINITIONS; PROVIDING FOR CATEGORIES OF ELIGIBLE EMPLOYERS; REVISING AWARD DISBURSEMENT LAWS; REQUIRING THE DEPARTMENT'S FUNDS TO REMAIN IN THE PROGRAM FOR FUTURE AWARDS; AND AMENDING SECTIONS 53-2-1215, 53-2-1216, AND 53-2-1218, MCA.

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

**Section 1.** Section 53-2-1215, MCA, is amended to read:

"**53-2-1215. Incumbent worker training program -- purpose.** There is an incumbent worker training program, administered by the department, the purpose of which is to:

(1) meet the training needs of incumbent workers in businesses employing ~~50 or fewer~~ workers in this state; and

(2) assist local businesses in preserving existing jobs for Montana residents."

**Section 2.** Section 53-2-1216, MCA, is amended to read:

"**53-2-1216. Definitions.** As used in 53-2-1215 through 53-2-1220, the following definitions apply:

(1) "Department" means the department of labor and industry provided for in 2-15-1701.

(2) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana;

(d) an apprenticeship program that is in compliance with Title 39, chapter 6; or

(e) an entity approved to provide workforce training that is approved by the department.

~~(3) "Employee" or "worker" means an individual currently employed in a predominantly year-round job and working an average of at least 20 hours a week.~~

~~(4)~~*(3)* "Employer" means a business entity that employs ~~50 or fewer employees~~ *workers* in this state and that is registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association.

~~(5)~~*(4)* "Incumbent worker" means ~~an employee~~ *a worker* who has completed at least 6 months of employment with the employer.

~~(6)~~*(5)* "Incumbent worker training program grant" or "grant" means the grant awarded to employers to hire eligible training providers to provide incumbent workers with education and training required to improve productivity, efficiency, or wages in existing jobs.

*(6) "Worker" means an individual currently employed in a predominantly year-round job and working an average of at least 20 hours a week.*"

**Section 3.** Section 53-2-1218, MCA, is amended to read:

"**53-2-1218. Incumbent worker training program grant award criteria.** (1) Subject to appropriation by the legislature, the department shall award grants as provided in this section. The distribution of funding must be reviewed annually by the department, and funds that are not being used or for which there are no qualified applications, as determined by the department~~, may be transferred to other programs as provided in 17-7-138 and 17-7-139~~ *must be distributed as provided pursuant to subsection (2).*

*(2) (a) The department shall award grants evenly to three categories of employers as follows:*

*(i) one-third to employers with 20 workers or fewer;*

*(ii) one-third to employers with 21 to 50 workers; and*

*(iii) one-third to employers with more than 50 workers.*

*(b) Every calendar quarter, if one category of employer does not have enough qualified applications, then the department shall distribute the remaining unused funds to the other two eligible categories of employers. Any remaining unused funds after this distribution must remain with the department for future distributions in accordance with this section.*

~~(2)~~*(3)* The following criteria must be used in determining whether to award an incumbent worker training program grant:

(a) prospects for enhancing the incumbent worker's productivity, efficiency, or wages;

(b) prospects for reducing incumbent worker turnover;

(c) ability to provide matching funds;

(d) a demonstrated need by the employer for upgrading skills of incumbent workers through training as a way to improve the employer's ability to remain competitive in the industry or in the economy;

(e) a direct relationship between the training and an added benefit to the incumbent worker's occupation or craft; and

(f) a demonstration that the training is not normally provided or required by the employer and, as far as may be determined, by the employer's competitors.

~~(3)~~*(4)* An incumbent worker training program grant award may not exceed ~~$2,000~~ *$2,500* annually for each incumbent worker who is being trained.

~~(4)~~*(5)* Subject to funding, the department may:

(a) limit the number of applicants that receive grant awards; or

(b) award less than the amount provided in subsection ~~(3)~~ *(4)*.

~~(5)~~*(6)* The recipient of a grant shall provide the department with:

(a) a properly executed agreement, signed by the employer's authorized representative, that outlines terms of the grant;

(b) documentation upon completion of training that the training was purchased and to whom the training was provided, including copies of certificates or statements of completion; and

(c) all receipts or copies of receipts associated with the training and the application."

Approved March 16, 2023

# CHAPTER NO. 55

[HB 48]

AN ACT GENERALLY REVISING LAWS RELATING TO ALCOHOL; REVISING ALCOHOL LAWS RELATING TO STORAGE DEPOTS; ALLOWING DISTILLERIES, WINERIES, AND BREWERIES TO MAINTAIN AND OPERATE STORAGE DEPOTS; REQUIRING LICENSEES TO PAY A FEE FOR EACH LICENSED STORAGE DEPOT LOCATION; AMENDING SECTIONS 16-3-411, 16-4-102, 16-4-312, AND 16-4-501, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 16-3-411, MCA, is amended to read:

"**16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301;

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury;

(h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license;

(i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11, directly to an individual in Montana who is at least 21 years of age; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 *9-liter* cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 *9-liter* cases a year.

(b) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, the shipment must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana Licensee";

(ii) delivered to the premises of a licensed table wine distributor or licensed retailer ~~who is in good standing~~; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding period, including the names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to the requirements of this code.

*(3) (a) A winery that is located in Montana and licensed to manufacture wine may be licensed by the department to own, lease, maintain, and operate anywhere in the state a storage depot for receiving, handling, and storing wine in addition to distributing and selling wine from the storage depot, subject to this code.*

*(b) To be licensed for a storage depot, a winery shall pay an annual license fee as provided in 16-4-501 for each storage depot operated by the winery, in addition to all other fees and taxes required to be paid by the winery, and must meet all applicable suitability requirements.*"

**Section 2.** Section 16-4-102, MCA, is amended to read:

"**16-4-102. Right of brewers *breweries* to maintain and operate storage depots -- annual licenses.** ~~It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, toown, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.~~ *A brewery that is located in Montana and licensed to manufacture beer, upon payment to the department of an annual license fee as provided in 16-4-501 for each storage depot operated by the brewery, in addition to all other fees and taxes required to be paid by the brewery, may own, lease, maintain, and operate anywhere in the state a storage depot for receiving, handling, and storing beer and for distributing and selling beer, subject to this code.*"

**Section 3.** Section 16-4-312, MCA, is amended to read:

"**16-4-312. Domestic distillery.** (1) A distillery located in Montana and licensed pursuant to 16-4-311 may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces;

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the department under this code, and the department shall include the distillery's liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

*(3) (a) A distillery that is located in Montana and licensed to manufacture distilled spirits may be licensed by the department to own, lease, maintain, and operate anywhere in the state a storage depot for receiving, handling, and storing distilled spirits in addition to distributing and selling distilled spirits from the storage depot, subject to this code.*

*(b) To be licensed for a storage depot, a distillery shall pay an annual license fee as provided in 16-4-501 for each storage depot operated by the distillery, in addition to all other fees and taxes required to be paid by the distillery, and must meet all applicable suitability requirements.*

~~(3)~~*(4)* A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for prepared servings though curbside pickup between 10 a.m. and 8 p.m. or consumption on the premises between 10 a.m. and 8 p.m.; or

(b) sell liquor in original packaging that it produces at retail at the distillery between the hours of 8 a.m. and 2 a.m. directly to the consumer, including curbside pickup, for off-premises consumption if:

(i) not more than 1.75 liters a day is sold to an individual; and

(ii) the minimum retail price as determined by the department is charged."

**Section 4.** Section 16-4-501, MCA, is amended to read:

"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each winery, $200; each table wine distributor, $400;

(ii) for each subwarehouse *and winery storage depot*, $400;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) $10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is $200;

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license; and

(c) a continuing care retirement community limited all-beverages license is $500 for each license.

(7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable

by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of a resort retail all-beverages license shall pay a $100,000 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another location within the boundaries of the resort area or to another owner to be used at a location within the boundaries of the resort area.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a retail beer and wine license to the Yellowstone airport is $400.

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(11) *(a)* The annual fee for a distillery is $600.

*(b) The annual fee for each distillery storage depot is $400.*

(12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

**Section 5. Applicability.** [This act] applies to new licenses for storage depots issued on or after October 1, 2023, and to renewal of licenses for storage depots that existed before October 1, 2023.

Approved March 16, 2023

# CHAPTER NO. 56

[HB 50]

AN ACT REVISING ALCOHOL LAWS TO REMOVE AN EXCEPTION THAT NO LONGER APPLIES TO RESTAURANT BEER AND WINE LICENSES; AMENDING SECTION 16-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-4-105, MCA, is amended to read:

"**16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:

(a) The number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(f) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.

(c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) Except as provided in subsection (2)(b), when more than one new beer license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. ~~Except for beer and wine licenses issued pursuant to 16-4-420, a~~ *A* person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(b) A person licensed under this subsection (6) may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21

years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

(8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a $25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

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

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

Approved March 16, 2023

# CHAPTER NO. 57

[HB 54]

AN ACT REMOVING THE RELATIVELY LOW RISK REQUIREMENT FROM THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; AMENDING SECTIONS 75-11-403 AND 75-11-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-11-403, MCA, is amended to read:

"**75-11-403. Definitions -- application.** (1) The definitions used in this part are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act ~~of~~ *of* 2001, Title II of Public Law 107-118.

(2) As used in this part, the following definitions apply:

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

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) ~~"Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated, or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and is not subject to a response under the federal Oil Pollution Act.~~

~~(i)~~ "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

~~(j)~~*(i)* "Viable responsible party" means a responsible party who is determined by the department in accordance with 75-11-407 to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site."

**Section 2.** Section 75-11-408, MCA, is amended to read:

"**75-11-408. Brownfields site eligibility at petroleum tank release sites -- determinations and limitations.** (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) ~~the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;~~

~~(b)~~ there is no viable responsible party for the petroleum tank release site;

~~(c)~~*(b)* the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

~~(d)~~*(c)* the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment

to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible for petroleum brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site."

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 16, 2023

# CHAPTER NO. 58

[HB 56]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; REMOVING THE SET-ASIDE PERCENTAGE OF THE STATE'S VOLUME CAP AND ALLOWING MORE FLEXIBILITY WITHIN STATE LAW; UPDATING TERMINOLOGY PERTAINING TO ANNUAL COMPREHENSIVE FINANCIAL REPORTS; AMENDING SECTIONS 17-5-205, 17-5-1302, 17-5-1312, 17-5-1313, 17-5-1316, 17-5-1318, AND 17-5-2201, MCA; AND PROVIDING EFFECTIVE DATES.

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

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

"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~April 8, 2021~~ *[the effective date of this act]*."

**Section 2.** Section 17-5-1302, MCA, is amended to read:

"**17-5-1302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the state's volume cap reserved for local issuers.

~~(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.~~

~~(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.~~

~~(12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.~~

~~(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established to provide student loan capital to the student loan program established by the board of regents of higher education under Title 20, chapter 26, part 11.~~

~~(14)~~*(10)* "Private activity bonds" (PABs) has the meaning prescribed under section 141 of the Internal Revenue Code, 26 U.S.C. 141.

~~(15)~~*(11)* "State issuer" means the state and any agency*, board, or authority* of the state authorized to issue private activity bonds. ~~For this part only, the Montana higher education student assistance corporation, to the extent authorized under federal law to issue private activity bonds, is considered a state issuer.~~

~~(16)~~*(12)* "State portion" means that portion of the state's volume cap reserved for state issuers.

~~(17)~~*(13)* "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

~~(18)~~*(14)* "Tax act" means the latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.

~~(19)~~*(15)* "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

**Section 3.** Section 17-5-1312, MCA, is amended to read:

"**17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection ~~(6)~~ *(3)*, the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer:

(a) ~~upon~~ *on* issuance of the bonds, shall pay 35 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the ~~comprehensive~~ annual *comprehensive* financial report audit; and

(b) shall provide the legislative auditor with full access to its financial records.

~~(3) As long as the Montana higher education student assistance corporation requests and receives authority to issue bonds under this part, the corporation shall:~~

~~(a) comply with the provisions of Title 2, chapter 3, in all meetings of the corporation's board of directors or other governing body unless compliance would conflict with federal or state security disclosure laws; and~~

~~(b) provide the legislative auditor with full access to any management or loan servicing contracts.~~

*(3) Through the first Monday in September, allocations of the state portion must be made by the department to state issuers pursuant to 17-5-1316. After the first Monday in September, the state portion expires and any unallocated and unused state portion remaining must be allocated by the department as the state's volume cap to issuers pursuant to 17-5-1316 without preference."*

~~(4) The following set-aside percentages of the state's volume cap must be made in each calendar year for the following state issuers:~~

| ~~State Issuer~~ | ~~Percentage~~ |
|---|---|
| ~~Board~~ | ~~4%~~ |
| ~~MBH~~ | ~~41%~~ |
| ~~MBI~~ | ~~25%~~ |
| ~~MHESAC~~ | ~~26%~~ |
| ~~MFFA~~ | ~~4%~~ |
| ~~Total~~ | ~~100%~~ |

~~(5) Each set-aside expires on the first Monday in September.~~

~~(6) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.~~

~~(7) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority.~~"

**Section 4.** Section 17-5-1313, MCA, is amended to read:

"**17-5-1313. Allocation to local issuers.** (1) The local portion must be allocated by the department pursuant to 17-5-1316, and *through the first Monday in September,* no local issuer is entitled to an allocation except from the local portion set-aside.

(2) No more than ~~$20~~ *$40* million of the local portion may be allocated for a single project or purpose prior to the first Monday in September of each year.

(3) After the first Monday in September, the local portion *expires and any unallocated and unused local portion remaining* must be allocated by the department *as the state's volume cap* to issuers pursuant to 17-5-1316 without preference~~, priority, or limitation~~."

**Section 5.** Section 17-5-1316, MCA, is amended to read:

"**17-5-1316. Allocations by the department.** (1) The department shall administer the allocation of *the* state's volume cap ~~bonds~~ to issuers in accordance with ~~this section and~~ 17-5-1312*, 17-5-1313, and this section*. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the ~~state's volume~~ cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

(c) the location of the project or projects;

(d) the name and address of each project owner and user;

(e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the ~~state's volume~~ cap bonds;

(f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the ~~state's volume~~ cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;

(g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the ~~state's volume~~ cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;

(i) the amount of allocation requested; and

(j) ~~such~~ *any* other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date."

**Section 6.** Section 17-5-1318, MCA, is amended to read:

"**17-5-1318. Terms of allocations.** (1) Unless terminated earlier by the issuer, an allocation is valid for ~~90~~ *120* days from the date the department mails the notice of approval. Prior to the expiration of the ~~90~~ *120*-day period, the department may extend the period of validity for an additional 30 days ~~upon~~ *on* presentation of evidence that an agreement to purchase the ~~state's volume~~ cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the ~~state's volume~~ cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made."

**Section 7.** Section 17-5-2201, MCA, is amended to read:

"**17-5-2201. Fee for issuance of bonds.** Except for issuers of general obligation bonds that are payable solely by general fund revenue and as provided in 17-5-1312(2)(a), each state bond issuer shall, ~~upon~~ *on* issuance of the bonds, pay 30 cents per thousand of bonds unless another fee is specifically provided for a type of bonds. The fee must be deposited in the state general fund for the purpose of funding a portion of the ~~comprehensive~~ annual *comprehensive* financial report audit."

**Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2024.

(2) [Section 1] and this section are effective on passage and approval.

Approved March 16, 2023

# CHAPTER NO. 59

[HB 65]

AN ACT GENERALLY REVISING COST REPORTING REQUIREMENTS FOR HOME AND COMMUNITY-BASED SERVICE PROVIDERS; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTION 53-6-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 53-6-406, MCA, is amended to read:

"**53-6-406. Fiscal accountability for home and community-based services -- *report to legislature*.** (1) (a) A provider of ~~personal assistance or attendant services or supports~~ *home and community-based services* shall submit cost information to the department each year if ~~the~~ personal assistance*, community supports, private-duty nursing,* or attendant services or supports are funded:

(i) as a state plan service;

(ii) through a medicaid state plan option available to the state under 42 U.S.C. 1396n(k); or

(iii) under a home and community-based services waiver ~~for the elderly and disabled~~ that is operated through a division of the department that administers ~~long-term care~~ *home and community-based* services ~~for senior citizens and individuals with physical disabilities~~.

(b) The information provided to the department must reflect costs incurred during the provider's most recent fiscal year.

(2) The department shall develop a standardized format for the information that includes the recognized *revenues and* expenditures incurred by providers.

(3) The department shall analyze cost information submitted by providers to determine at a minimum:

(a) the reasonable cost of providing the home and community-based services detailed in the report;

(b) the percentage of a provider's cost represented by payment of wages and benefits for direct-care employees; and

(c) the level of profit or loss that each provider incurred in delivering the service. The profit or loss must be determined by comparing the recognized cost of providing the service with the medicaid reimbursement provided for the same service.

~~(4) The department may adopt rules requiring other providers of medicaid home and community-based services that are provided in a person's home to submit the cost information required under this section.~~

*(4) The department shall establish protocols to protect provider-specific confidential data from public disclosure.*

*(5) By September 1 of the year preceding a regular legislative session, the department shall report to the children, families, health, and human services interim committee in accordance with 5-11-210 on all information in this section.*"

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

Approved March 16, 2023

# CHAPTER NO. 60

[HB 68]

AN ACT GENERALLY REVISING LAWS RELATING TO THE SALE OF BEER AND WINE LICENSES; CREATING RETAIL BEER AND WINE LICENSES BY COMBINING RETAIL BEER LICENSES WITH WINE AMENDMENTS; ELIMINATING WINE AMENDMENTS; REVISING ANNUAL FEES; REVISING GOLF COURSE BEER AND WINE LICENSES; AMENDING SECTIONS 16-4-105, 16-4-109, 16-4-110, 16-4-111, 16-4-305, 16-4-306, 16-4-420, AND 16-4-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 16-4-105, MCA, is amended to read:

"**16-4-105. Limit on retail beer *and wine* licenses -- ~~wine license amendments --~~ limitation on use of license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell ~~beer at retail or~~ beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:

(a) The number of retail beer *and wine* licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than one retail beer *and wine* license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer *and wine* license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer *and wine* licenses for the first 2,000 inhabitants, two additional retail beer *and wine* licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer *and wine* license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer *and wine* licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license

existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer *and wine* licenses of issue on March 7, 1947, and retail beer *and wine* licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer *and wine* license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(f) The number of retail beer *and wine* licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer *and wine* license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new retail beer *and wine* licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new *retail* beer *and wine* license a year until the quota has been reached.

(c) If any new retail beer *and wine* licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation ~~after April 15, 2005,~~ may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer *and wine* license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) Except as provided in subsection (2)(b), when more than one new *retail* beer *and wine* license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) ~~A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary~~

~~to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a~~ *A* person holding a *retail* beer and wine license may sell *beer and* wine for consumption on or off the premises. ~~Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.~~

(b) A person ~~licensed under this subsection (6)~~ *holding a retail beer and wine license* may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

(8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a $25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

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

**Section 2.** Section 16-4-109, MCA, is amended to read:

"**16-4-109. Golf course beer and wine license.** (1) ~~Upon~~ *On* application, the department ~~of revenue~~ shall issue a retail beer and wine license, to be known as a golf course beer and wine license, for use at a golf course. ~~If the owner of the golf course is not the state, a unit of the university system, or a local government, to qualify for a license under this section:~~

~~(a) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;~~

~~(ii) the golf course must be either within the limits of an incorporated city or town or within 5 miles of the limits of an incorporated city or town;~~

~~(iii) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application; and~~

~~(iv) the applicant shall pay an initial application fee of $20,000; or~~

~~(b) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;~~

~~(ii) the governing body of the golf course must be incorporated under section 501(c)(3) of the Internal Revenue Code;~~

~~(iii) the golf course must be within 5 miles of the limits of an incorporated city or town; and~~

~~(iv) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application.~~

~~(2)~~ The application must be made by the person or entity that owns and operates the golf course. ~~If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of beer licenses.~~

~~(3)~~*(2) The department shall issue a golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.*

*(3) If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of retail beer and wine licenses and:*

*(a) the golf course must consist of at least 9 holes and 2,500 lineal yards;*

*(b) the golf course must be either within the limits of an incorporated city or town or within 5 miles of the limits of an incorporated city or town;*

*(c) the applicant for a license under this section may not have held a retail beer and wine or all-beverages license within 12 months of the date of application; and*

*(d) the applicant, except for a golf course under a governing body incorporated under section 501(c)(3) of the Internal Revenue Code, shall pay an initial application fee as provided in 16-4-501.*

*(4) If the owner of the golf course is the state, a unit of the university system, or a local government, the department may approve the application if an owner-designated individual who provides general oversight of the alcoholic beverage operations meets the requirements of 16-4-401(2)(a)(iv) through (2)(a)(vi).*

*(5)* (a) Except as provided in subsection ~~(3)(c)~~ *(5)(c)*, a golf course beer and wine license and all retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer *and wine* license ~~with a wine license amendment~~.

(b) If the owner of the golf course is not the state, a unit of the university system, or a local government:

(i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;

(ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and

(iii) gaming or gambling is not authorized under the license issued under this section.

(c) If the owner of a golf course is the state, a unit of the university system, or a local government, the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by the department ~~of revenue~~.

~~(4) The department of revenue shall issue a golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.~~"

**Section 3.** Section 16-4-110, MCA, is amended to read:

"**16-4-110. Beer *and wine* license for tribal alcoholic beverages licensee or enlisted personnel, noncommissioned officers', or officers' club.** (1) ~~Upon~~ *On* application and qualification, the department shall issue a license to sell beer *and wine* for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) ~~Upon~~ *On* application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer *and wine* at retail for on-premises consumption.

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

**Section 4.** Section 16-4-111, MCA, is amended to read:

"**16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell ~~beer at retail or~~ beer and wine at retail for on-premises consumption may, ~~upon~~ *on* the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of ~~beer or~~ beer and wine to persons attending a special event ~~upon~~ *on* premises not otherwise licensed for the sale of ~~beer or~~ beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell ~~beer at retail or~~ beer and wine at retail for on-premises consumption may, ~~upon~~ *on* the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event ~~upon~~ *on* premises not otherwise licensed for the sale of ~~beer or~~ beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of ~~beer or~~ beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of ~~beer or~~ beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of ~~beer or~~ beer and wine on premises where the event is to be held.

(7) (a) A catering endorsement issued for the purpose of selling and serving ~~beer or~~ beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve ~~beer or~~ beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(b) A catering endorsement issued for the purpose of selling and serving ~~beer or~~ beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve ~~beer or~~ beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

**Section 5.** Section 16-4-305, MCA, is amended to read:

"**16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota.** (1)~~(a)~~ The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the

purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail ~~liquor~~ *alcoholic beverage* licenses.

~~(b) The department may issue a wine amendment pursuant to 16-4-105(6) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.~~

(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail ~~liquor~~ *alcoholic beverage* licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages ~~liquor~~ licenses and retail on-premises beer *and wine* licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

**Section 6.** Section 16-4-306, MCA, is amended to read:

"**16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.** (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail ~~beer or~~ beer and wine license and, *on* ~~upon~~ approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.

(2) A license that is transferred to a political subdivision of the state:

(a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;

(b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;

(c) may be authorized only for a fairgrounds complex owned by the political subdivision;

(d) is authorized for use in all facilities contained in the fairgrounds complex;

~~(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(5);~~

~~(f)~~*(e)* must be taken into account in determining the license quota restrictions of 16-4-105; and

~~(g)~~*(f)* is subject to all license fees, laws, and rules applicable to retail ~~beer or~~ beer and wine licenses.

(3) The department may adopt rules to implement the provisions of this section."

**Section 7.** Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of

the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) and (3)(b). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license; and

(b) (i) the applicant's premises are suitable for the carrying on of the business;

(ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for carrying on with the business in accordance with 16-4-417; or

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

(7) (a) A restaurant beer and wine license not issued through a competitive bidding process as provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer *and wine* licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer *and wine* licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer *and wine* licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer *and wine* licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer *and wine* licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(A) the county boundary within which the incorporated city or incorporated town is located; or

(B) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection (9)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(11) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available.

(12) When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

(13) (a) Except as provided in subsection (13)(b), beer and wine may be sold for off-premises consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

(b) A restaurant beer and wine licensee may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(14) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. ~~Upon~~ *On* the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or fewer;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(15) The annual fee for a restaurant beer and wine license is $400.

(16) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(18) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

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

**Section 8.** Section 16-4-501, MCA, is amended to read:

"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each winery, $200; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer *and wine* retailer, ~~$200~~ *$400*;

(d) (i) for a license to sell beer at retail for off-premises consumption only, ~~the same as a retail beer license~~ *$200*;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) $10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued ~~upon~~ *on* payment by the applicant of an annual license fee in the sum of $300.

~~(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.~~

~~(6)~~*(5)* The annual renewal fee for:

(a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is $200;

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license; and

(c) a continuing care retirement community limited all-beverages license is $500 for each license.

~~(7)~~*(6)* Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than

2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of a resort retail all-beverages license shall pay a $100,000 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another location within the boundaries of the resort area or to another owner to be used at a location within the boundaries of the resort area.

~~(8)~~*(7)* The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

~~(9)~~*(8)* The annual fee for a retail beer and wine license to the Yellowstone airport is $400.

~~(10)~~*(9)* The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

~~(11)~~*(10)* The annual fee for a distillery is $600.

~~(12)~~*(11)* The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(13)~~*(12)* In addition to other license fees, the department ~~of revenue~~ may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(14)~~*(13)* All license and permit fees collected under this section must be deposited as provided in 16-2-108."

**Section 9. Transition.** The department of revenue shall reclassify existing retail beer licenses to retail beer and wine licenses pursuant to [section 1] after June 30, 2024, during the existing license's renewal.

**Section 10. Effective date.** [This act] is effective July 1, 2024.

Approved March 16, 2023

# CHAPTER NO. 61

[HB 69]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO AGENCY STORES; REVISING LAWS RELATED TO TABLE WINE; ELIMINATING THE PHASING OUT OF COMMISSION RATES; CLARIFYING HOURS OF OPERATION; REVISING LAWS RELATED TO PAYMENT FOR SALES; AMENDING SECTIONS 16-1-106, 16-2-101, 16-2-103, 16-2-104, AND 16-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor ~~and table wine~~ as a commission merchant ~~rather than as an employee~~ *rather than as an employee*.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

(11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

(12) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(13) "Growler" means any fillable, sealable container complying with federal law.

(14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(15) "Immediate family" means a spouse, dependent children, or dependent parents.

(16) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

(18) "Malt beverage" means:

(a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or

(b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.

(19) (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.

(b) The term includes but is not limited to:

(i) bottles;

(ii) cans; and

(iii) kegs.

(20) "Package" means a container or receptacle used for holding an alcoholic beverage.

(21) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

(22) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed with a lid, for consumption at a place other than the licensee's premises.

(23) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(24) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(25) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(26) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(27) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(28) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(29) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(30) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(31) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(32) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes *hard* cider.

(33) "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.

(34) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(35) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural

products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

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

"**16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement -- kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate. The commission rates constitute the only compensation the department provides to agency liquor stores and reflect that agency liquor stores sell at retail and wholesale and must provide the discount in 16-2-201.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) (a) ~~Beginning February 1, 2016, each agency liquor store's commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2017, each agency liquor store's commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus 2/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2018, each agency liquor store's commission rate is determined as in subsection (4)(b).~~

~~(b)~~ Agency liquor stores must receive an annual commission rate based on the total posted price of liquor purchased in the previous calendar year, as follows:

(i) 16% commission for stores that purchased not more than $250,000;

(ii) 15.5% commission for stores that purchased more than $250,000 but not more than $500,000;

(iii) 15% commission for stores that purchased more than $500,000 but not more than $720,000;

(iv) 14.5% commission for stores that purchased more than $720,000 but not more than $950,000;

(v) 14% commission for stores that purchased more than $950,000 but not more than $1.525 million;

(vi) 13.5% commission for stores that purchased more than $1.525 million but not more than $1.85 million;

(vii) 13% commission for stores that purchased more than $1.85 million but not more than $2.25 million;

(viii) 12.75% commission for stores that purchased more than $2.25 million but not more than $3.25 million;

(ix) 12.5% commission for stores that purchased more than $3.25 million but not more than $7 million; or

(x) 12.15% commission for stores that purchased more than $7 million.

~~(c)~~*(b)* For commissions determined under subsection (4)~~(b)~~*(a)*, the department shall by February 1 of each year:

(i) calculate purchases based on all liquor invoiced to the agency liquor store during the previous calendar year;

(ii) notify agency liquor stores of their commission rate to be applied for the period beginning February 1 and ending January 31; and

(iii) adjust the dollar values for purchase amounts under subsection (4)~~(b)~~*(a)* based on the consumer price index for the prior calendar year and notify all agency liquor stores of the adjustment.

~~(d)~~*(c)* New stores must receive a commission established by competitive bidding, which is guaranteed for 3 calendar years, after which time the agency liquor store's commission is subject to subsection (4)~~(b)~~*(a)*.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period, renewable for additional 10-year periods, if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The liability insurance requirement may be reviewed every 3 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(7) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(8) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(9) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(10) A person or entity may not hold an ownership interest in more than one agency liquor store.

(11) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%.

~~(12) For the purposes of this section, the term "combined commission rate" means the agency liquor store's weighted average discount rate plus the discount rate provided for sales volume plus the agency liquor store's commission rate that existed on December 31, 2015.~~"

**Section 3.** Section 16-2-103, MCA, is amended to read:

"**16-2-103. Duplicate invoices of sales required.** (1) An agency liquor store shall, ~~upon~~ *on* each sale of liquor ~~or table wine~~ to any licensee, issue a duplicate invoice of the liquor ~~or table wine~~ purchased, as provided by the department, a copy of which must be delivered to the licensee and one copy retained at the store.

(2) The invoice must show the date of purchase, the name of the employee making the sale, the quantity of each kind of liquor ~~or table wine~~ purchased, the price paid for the liquor ~~or table wine~~, the name of the licensee, and the number of the license, with any other information that may be required by the department.

(3) The licensee shall keep and retain the duplicate invoice of all purchases made from an agency liquor store, which must at all times be subject to inspection by the duly authorized officers, agents, and employees of the department."

**Section 4.** Section 16-2-104, MCA, is amended to read:

"**16-2-104. Hours.** (1) Agency liquor stores may remain open during the period between 8 a.m. and 2 a.m. The stores must be closed for the transaction of business on legal holidays and between the close of normal business Saturday ~~afternoon~~ up to the opening of normal business Tuesday morning.

(2) (a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on a form prescribed by the department. The department shall verify the validity of the signatures on the petition. If the department determines that the petition contains sufficient valid signatures, all agency liquor stores within the designated market area must be allowed to transact business on Mondays that are not legal holidays. To determine the number of signatures needed, the department shall round up to the nearest whole number any fractional number of all-beverages licensees.

(b) For the purposes of subsection (2)(a), immediate market area means:

(i) the city limits for stores located in incorporated cities or towns; and

(ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities or towns or in a consolidated local government."

**Section 5.** Section 16-2-203, MCA, is amended to read:

"**16-2-203. Sales to licensees.** Agency liquor stores may sell to licensees licensed under this code all kinds of liquor ~~and table wine~~ at the posted price. All sales must be ~~made on a cash basis~~ *paid for at the time of sale*."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved March 16, 2023

# CHAPTER NO. 62

[HB 83]

AN ACT TRANSFERRING THE FAMILY VIOLENCE PREVENTION AND SERVICES ACT GRANT PROGRAM AND THE PARTNER AND FAMILY MEMBER ASSAULT INTERVENTION AND TREATMENT FUND ACCOUNT FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE BOARD OF CRIME CONTROL TO CONSOLIDATE DOMESTIC VIOLENCE GRANTS ADMINISTERED BY THE BOARD; PROVIDING THE BOARD OF CRIME CONTROL WITH RULEMAKING AUTHORITY TO ADMINISTER THE GRANT PROGRAM; AMENDING SECTION 40-15-110, MCA; REPEALING SECTIONS 52-6-101, 52-6-102, 52-6-103, 52-6-104, AND 52-6-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Family Violence Prevention and Services Act grant program.** There is a Family Violence Prevention and Services Act grant program established within the board of crime control for the allocation of grant money to local domestic violence programs.

**Section 2. Duties of board.** The board of crime control:

(1) may adopt rules necessary to carry out the purposes of [sections 1 through 5];

(2) may spend no more than 5% of the appropriated funds for administrative costs of the grant program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of [sections 1 through 5];

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to domestic violence.

**Section 3. Authorized grantees -- criteria for grants.** (1) The board of crime control may award domestic violence grants only to local partner or family member assault programs that are locally controlled. Grants may be awarded to governmental agencies or nongovernmental organizations or persons.

(2) Domestic violence grants must be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

**Section 4. Authorized services of programs.** (1) Local domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their partners;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local domestic violence program if authorized by the board of crime control according to regional boundaries established by the board.

**Section 5. Funding.** Twenty percent of the operational costs of a domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

**Section 6.** Section 40-15-110, MCA, is amended to read:

"**40-15-110. Partner and family member assault intervention and treatment fund account.** (1) There is a partner and family member assault intervention and treatment fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the ~~department of public health and human services~~ *board of crime control* to fund services to victims of partner or family member assault, as provided in subsections (2) and (3).

(2) The ~~department~~ *board* shall distribute the money in the account, as provided in subsection (3), to agencies that provide direct services to victims of partner or family member assault, including but not limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible to receive money under this section for services provided to a victim of

partner or family member assault, whether or not the victim seeks or receives services within the criminal justice system.

(3) A service provider that provides direct services to victims of partner or family member assault shall apply to the ~~department~~ *board* for distribution of money under this section. The ~~department~~ *board* shall evaluate a provider's eligibility to receive money under this section based on available money, the needs of the provider, whether the provider includes programs focused on prevention of partner and family member assault, the quality of services provided by the provider, the need for services in the community, and the need for improved or continuing services in the community."

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

52-6-101. Battered spouses and domestic violence grant program created.
52-6-102. Duties of department.
52-6-103. Authorized grantees -- criteria for grants.
52-6-104. Authorized services of programs.
52-6-105. Funding.

**Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified as a new part in Title 44, chapter 7, and the provisions of Title 44, chapter 7, apply to [sections 1 through 5].

**Section 9. Effective date.** [This act] is effective October 1, 2024.

Approved March 16, 2023

# CHAPTER NO. 63

[HB 85]

AN ACT EXEMPTING THE LAND BOARD AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM ENVIRONMENTAL REVIEW FOR CERTAIN IMPROVEMENTS RELATED TO AGRICULTURE AND GRAZING LEASES ON STATE TRUST LANDS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-1-121, MCA, is amended to read:

"**77-1-121. Environmental review compliance -- exemptions.** (1) Except as provided in 77-1-122, 77-1-1112, and subsection (2) of this section, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title only if the department is actively proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or is acting in response to an application for an authorization for a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title if the department or board chooses not to take any action, even though either may have the authority to take an action.

(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning.

*(5) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing the following actions related to agricultural or grazing leases under Title 77, chapter 6, part 1:*

*(a) the repair, maintenance, or replacement of infrastructure;*

*(b) water developments that have a de minimis impact on the environment, including but not limited to placement of stockwater tanks and pipeline; and*

*(c) routine herbicide applications.*"

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

Approved March 16, 2023

# CHAPTER NO. 64

[HB 86]

AN ACT REVISING THE MONTANA WILDLIFE HABITAT IMPROVEMENT ACT; REVISING THE SHORT TITLE OF THE ACT; REVISING ELIGIBILITY CRITERIA AND ADVISORY COUNCIL DUTIES; REPEALING THE ACT'S TERMINATION DATE; AMENDING SECTIONS 87-5-801, 87-5-803 AND 87-5-806, MCA; REPEALING SECTION 11, CHAPTER 342, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-5-801, MCA, is amended to read:

"**87-5-801. ~~(Temporary)~~ Short title.** This part may be cited as the "*Kelly Flynn* Montana Wildlife Habitat Improvement Act". ~~(Terminates June 30, 2023--sec. 11, Ch. 342, L. 2017.)~~"

**Section 2.** Section 87-5-803, MCA, is amended to read:

"**87-5-803. ~~(Temporary)~~ Wildlife habitat improvement advisory council -- *duties* -- members.** (1) There is a wildlife habitat improvement advisory council appointed by the director that ranks projects pursuant to 87-5-804 and advises the department on the administration of this part, *including making recommendations on additional weed and soil treatment options and methods that are eligible for funding under this part*. The council consists of the following voting members:

(a) the director of the department or a representative of the department;

(b) a representative of a hunting organization in Montana;

(c) a representative of a multiple-use recreation organization in Montana;

(d) a representative of the timber industry in Montana;

(e) a livestock producer or a representative of a livestock producer organization in Montana;

(f) a farmer or a representative of a farming organization in Montana;

(g) a commercial applicator as defined in 80-8-102;

(h) a representative of biological research and control interests;

(i) a representative of the Montana weed control association; and

(j) two county representatives, one each from the western and eastern parts of the state, who may include a county commissioner, district weed board member, or weed district supervisor.

(2) Nonvoting members of the council include:

(a) the state weed coordinator; and

(b) one representative each from:

(i) the United States bureau of land management;

(ii) the United States forest service;

(iii) the United States bureau of reclamation;

(iv) the United States fish and wildlife service;

(v) the Montana department of natural resources and conservation; and

(vi) an Indian tribe as defined in 2-15-141. ~~(Terminates June 30, 2023--sec. 11, Ch. 342, L. 2017.)~~"

**Section 3.** Section 87-5-806, MCA, is amended to read:

"**87-5-806. ~~(Temporary)~~ Administration and expenditure of funds -- cooperation with other entities.** (1) (a) The department may expend funds deposited pursuant to 87-5-805 through grants or contracts to communities, noxious weed management districts, conservation districts, nonprofit organizations exempt from taxation under 26 U.S.C. 501(c)(3), or other entities that it considers appropriate for wildlife habitat improvement projects.

(b) The department shall consider project recommendations from the council.

(c) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for the management of noxious weeds.

(2) A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less:

(a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or

(b) appropriating an amount of not less than $100,000 from any source.

(3) The department may expend money deposited pursuant to 87-5-805 to:

(a) restore, rehabilitate, improve, or manage areas of land as wildlife habitat by controlling noxious weeds;

(b) acquire goods and services that will help control noxious weeds in order to restore, rehabilitate, improve, or manage land as wildlife habitat;

(c) fund cost-share noxious weed management programs with local noxious weed management districts; or

(d) provide special grants to local noxious weed management districts to eradicate or contain significant noxious weeds newly introduced into the county that affect wildlife habitat.

(4) Expenditures allowed pursuant to subsection (3) are limited to:

(a) biological or mechanical control of noxious weeds;

(b) purchases and application of approved herbicides;

(c) seed purchases and application of seed; ~~and~~

(d) grazing costs as a component of an overall integrated noxious weed management plan*;*

*(e) other weed and soil treatment options and methods recommended by the council to reduce noxious weeds and support native vegetation; and*

*(f) grant administration, vegetation monitoring, and related administrative costs not to exceed 10% of a total project amount.*

(5) The department may expend the funds deposited pursuant to 87-5-805 to pay costs incurred by the department for administering this part and providing support to the council, including but not limited to personal services costs, operating costs, and other administrative costs. After fiscal year 2019, administrative costs may not exceed 15% of the total amount expended pursuant to subsection (3). ~~(Terminates June 30, 2023--sec. 11, Ch. 342, L. 2017.)~~"

**Section 4. Repealer.** Section 11, Chapter 342, Laws of 2017, is repealed.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved March 16, 2023

# CHAPTER NO. 65

[HB 93]

AN ACT REVISING LAWS RELATED TO NOXIOUS WEED MANAGEMENT; ELIMINATING THE NOXIOUS WEED SEED FREE FORAGE ADVISORY COUNCIL AND TRANSFERRING DUTIES TO THE NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL; REVISING THE MAKEUP OF THE NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL; AMENDING SECTIONS 80-7-805, 80-7-903, AND 80-7-909, MCA; REPEALING SECTION 80-7-904, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 80-7-805, MCA, is amended to read:

"**80-7-805. Noxious weed management advisory council.** (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of this part *and part 9 of this title*.

(2) If appointed, the council must be composed of 11 members, as follows:

(a) the director of the department of agriculture, who shall serve as presiding officer;

(b) one member representing livestock production;

(c) one member representing agriculture crop production;

(d) one member from a recreationist/wildlife group;

(e) one member who is a herbicide dealer or applicator;

(f) one member ~~from a consumer group~~ *representing noxious weed seed free material interests*;

(g) one member representing ~~biological research and control interests~~ *weed research and control interests*;

(h) one member from the Montana weed control association;

(i) two members representing counties, one each from the western and eastern parts of the state, which may include a county commissioner, district weed board member, or weed district supervisor; and

(j) one at-large member from the agricultural community."

**Section 2.** Section 80-7-903, MCA, is amended to read:

"**80-7-903. Definitions.** As used in this part, the following definitions apply:

(1) "Advisory council" means the ~~Montana noxious weed seed free forage advisory council~~ *Montana noxious weed management advisory council*. Except as provided in ~~80-7-904~~ *80-7-805*, the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage

production fields are free of the seeds of noxious weeds, as defined in 7-22-2101, which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

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

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free."

**Section 3.** Section 80-7-909, MCA, is amended to read:

"**80-7-909. Rules.** The department may, with the advice of the advisory council appointed under ~~80-7-904~~ *80-7-805*, adopt rules necessary to carry out its responsibilities under this part in accordance with Title 2, chapter 4. The rules may include but are not limited to:

(1) contracts and agreements;

(2) certification standards, processing, and sampling and equipment standards and operation;

(3) inspections and investigation procedures and standards;

(4) operations;

(5) records;

(6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection;

(7) reciprocal agreements with other states or Canadian provinces; and

(8) penalties, stop sales, condemnation, and other orders."

**Section 4. Repealer.** The following section of the Montana Code Annotated is repealed:

80-7-904. Composition of advisory council.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved March 16, 2023

# CHAPTER NO. 66

[HB 94]

AN ACT REPEALING THE MONTANA HUCKLEBERRY FILING LAWS; REPEALING SECTIONS 80-11-701 AND 80-11-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

80-11-701. Content criteria for Montana huckleberry products.

80-11-702. Penalties for false labeling.

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

Approved March 16, 2023

# CHAPTER NO. 67

[HB 121]

AN ACT REQUIRING THE RETURN TO THE FEDERAL GOVERNMENT OF LODGING TAX REVENUE PAID WITH FEDERAL FUNDS; AND AMENDING SECTIONS 15-65-121 AND 15-68-820, MCA.

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

**Section 1.** Section 15-65-121, MCA, is amended to read:

"**15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections (2)(a) through (2)(i) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The department shall distribute the portion of the 4% that was paid with federal funds to the ~~agency that made the in-state lodging expenditure~~ *department of administration for return to the federal government* and deposit 30% of the amount deducted less the portion paid with federal funds in the state general fund.

(2) The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the state general fund, distributed to agencies that paid the tax with federal funds, or deposited in the heritage preservation and development account must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical interpretation state special revenue account, to the Montana historical society, to the university system, to the state-tribal economic development commission, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 1.4% to the invasive species state special revenue account established in 80-7-1004;

(e) 60.3% to be used directly by the department of commerce;

(f) (i) except as provided in subsection (2)(f)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district;

(g) 0.5% to the state special revenue account provided for in 90-1-135 for use by the state-tribal economic development commission established in 90-1-131 for activities in the Indian tourism region;

(h) 2.6% to the Montana historical interpretation state special revenue account established in 22-3-115; and

(i) 2.7% or $1 million, whichever is less, to the Montana heritage preservation and development account provided for in 22-3-1004. The Montana heritage preservation and development commission shall report on the use of funds received pursuant to this subsection (2)(i) to the legislative finance committee on a semiannual basis, in accordance with 5-11-210.

(3) If a city, consolidated city-county, resort area, or resort area district qualifies under 15-68-820(5)(b)(iii) or this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(4) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(5) The tax proceeds received that are transferred to a state special revenue account pursuant to subsections (2)(a) through (2)(c), (2)(e), and (2)(f) are statutorily appropriated to the entities as provided in 17-7-502.

(6) The tax proceeds received that are transferred to the invasive species state special revenue account pursuant to subsection (2)(d), to the Montana historical interpretation state special revenue account pursuant to subsection (2)(h), and to the Montana heritage preservation and development account pursuant to subsection (2)(i) are subject to appropriation by the legislature. (Terminates June 30, 2027--sec. 12, Ch. 563, L. 2021.)

**15-65-121. (Effective July 1, 2027) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections (2)(a) through (2)(h) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The department shall

distribute the portion of the 4% that was paid with federal funds to the ~~agency that made the in-state lodging expenditure~~ *department of administration for return to the federal government* and deposit 30% of the amount deducted less the portion paid with federal funds in the state general fund. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004.

(2) The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the state general fund, distributed to agencies that paid the tax with federal funds, or deposited in the heritage preservation and development account must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical interpretation state special revenue account, to the Montana historical society, to the university system, to the state-tribal economic development commission, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 1.4% to the invasive species state special revenue account established in 80-7-1004;

(e) 63% to be used directly by the department of commerce;

(f) (i) except as provided in subsection (2)(f)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district;

(g) 0.5% to the state special revenue account provided for in 90-1-135 for use by the state-tribal economic development commission established in 90-1-131 for activities in the Indian tourism region; and

(h) 2.6% to the Montana historical interpretation state special revenue account established in 22-3-115.

(3) If a city, consolidated city-county, resort area, or resort area district qualifies under 15-68-820(5)(b)(iii) or this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(4) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion

of the state as a location for the production of motion pictures and television commercials.

(5) The tax proceeds received that are transferred to a state special revenue account pursuant to subsections (2)(a) through (2)(c), (2)(e), and (2)(f) are statutorily appropriated to the entities as provided in 17-7-502.

(6) The tax proceeds received that are transferred to the invasive species state special revenue account pursuant to subsection (2)(d) and to the Montana historical interpretation state special revenue account pursuant to subsection (2)(h) are subject to appropriation by the legislature."

**Section 2.** Section 15-68-820, MCA, is amended to read:

"**15-68-820. Sales tax and use tax proceeds.** (1) Except as provided in subsections (2) through (6), all money collected under this chapter must, in accordance with the provisions of 17-2-124, be deposited by the department into the general fund.

(2) Twenty-five percent of the revenue collected on the base rental charge for rental vehicles under 15-68-102(1)(b) and 15-68-102(3)(a)(ii) must be deposited in the state special revenue fund to the credit of the senior citizen and persons with disabilities transportation services account provided for in 7-14-112.

(3) Until December 31, 2024, a portion of the revenue collected on the sale or use of accommodations and campgrounds under 15-68-102(1)(a) and (3)(a)(i) must be deposited as follows:

(a) 20% in the account established in 22-3-1303 for construction of the Montana heritage center; and

(b) 5% in the account established in 22-3-1307 for historic preservation grants.

(4) Starting January 1, 2025, a portion of the revenue collected on the sale or use of accommodations and campgrounds under 15-68-102(1)(a) and (3)(a)(i) must be deposited or distributed as follows:

(a) 6% in the account established in 22-3-1304 for operation and maintenance of the Montana heritage center;

(b) 6% distributed as provided in subsection (5);

(c) 6% in the account established in 22-3-1307 for historic preservation grants; and

(d) 7% in the account established in 17-7-209.

(5) (a) Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsection (5)(b) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 1% of that amount from the tax proceeds received each reporting period. The department shall distribute the portion of the 1% that was paid with federal funds to the ~~agency that made the in-state lodging expenditure~~ *department of administration for return to the federal government* and deposit 30% of the amount deducted less the portion paid with federal funds in the state general fund.

(b) The balance of the tax proceeds received each reporting period and not distributed to agencies that paid the tax with federal funds must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the department of fish, wildlife, and parks, and to the state-tribal economic development commission as follows:

(i) 7% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(ii) 68.5% to be used directly by the department of commerce;

(iii) (A) except as provided in subsection (5)(b)(iii)(B), 24% to be distributed by the department of commerce to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(B) if 24% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district; and

(iv) 0.5% to the state special revenue account provided for in 90-1-135 for use by the state-tribal economic development commission established in 90-1-131 for activities in the Indian tourism region.

(6) The tax proceeds received that are transferred to a state special revenue account pursuant to subsection (5)(b) are allocated to the entities."

Approved March 16, 2023

# CHAPTER NO. 68

[HB 124]

AN ACT REVISING THE COLLECTION OF TAXES ON BEER, WINE, AND HARD CIDER FROM MONTHLY TO QUARTERLY; AMENDING SECTIONS 16-1-406 AND 16-1-411, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler. A barrel of beer equals 31 gallons. The tax is based ~~upon~~ *on* the total number of barrels of beer produced by a brewer in a year. A brewer who produces ~~less~~ *fewer* than 10,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30.

(b) The tax on beer sold for a brewer who produces over 10,000 barrels is $4.30.

(2) The tax imposed pursuant to subsection (1) is due at the end of each ~~month~~ *quarter* from the wholesaler ~~upon~~ *on* beer sold by the wholesaler during that ~~month~~ *quarter*. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund."

**Section 2.** Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor and on table wine

shipped directly to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a ~~monthly~~ *quarterly* basis on or before the 15th day of each ~~month~~ *quarter* during the following period that begins October 1 and ends September 30.

(b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on or before October 15 of the following period that begins October 1 and ends September 30.

(c) A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to consumers or licensed retailers in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on ~~a monthly~~ *quarterly* basis on or before the 15th of each ~~month~~ *quarter* for sales in the previous ~~month~~ *quarter*.

(d) A table wine distributor that sells sacramental wine, table wine, or hard cider in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a ~~monthly~~ *quarterly* basis on or before the 15th day of each ~~month~~ *quarter* for sales in the previous ~~month~~ *quarter*.

(3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects the winery or the table wine distributor to the penalties and interest provided for in 15-1-216.

(4) The tax paid by a winery or by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(5) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(6) For purposes of this section, "table wine" has the meaning assigned in 16-1-106~~,~~ but does not include hard cider."

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

**Section 4. Applicability.** [This act] applies to beer, sacramental wine, table wine, or hard cider sold on or after July 1, 2023.

Approved March 16, 2023

# CHAPTER NO. 69

[HB 133]

AN ACT ALLOWING AN ONLINE APPLICATION FOR NONRESIDENT COLLEGE STUDENT LICENSES; AMENDING SECTION 87-2-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-525, MCA, is amended to read:

"**87-2-525. Nonresident college student licenses.** (1) Subject to the provisions of subsection (2), a student who is not a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase discounted hunting and fishing licenses as follows:

(a) If the student's state of residence does not offer resident-rate licenses to Montanans who are full-time college students in that state, the student may purchase the following for one-half of the cost:

(i) one of the following:

(A) a Class B-10 nonresident big game combination license;

(B) a Class B-11 nonresident deer combination license; or

(C) a nonresident elk-only combination license;

(ii) if available:

(A) a Class B-8 nonresident deer B tag; and

(B) a Class B-12 nonresident antlerless elk B tag license.

(b) If the student's state of residence offers resident-rate licenses to Montanans who are full-time college students in that state and as long as a drawing for the equivalent resident license is not required, the student may purchase for the same price as the equivalent resident license:

(i) (A) any of the following:

(I) a Class B-30 nonresident college student fishing license;

(II) a Class B-31 nonresident college student upland game bird license;

(III) a Class B-32 nonresident college student deer A tag; and

(IV) a Class B-33 nonresident college student elk tag; or

(B) a Class B-34 nonresident college student big game combination license that entitles the holder to all the privileges of the licenses listed in subsection (1)(b)(i)(A) and a nonresident wildlife conservation license;

(ii) a Class B-35 nonresident college student migratory game bird license;

(iii) a Class B-36 nonresident college student turkey tag;

(iv) a Class B-37 nonresident college student deer B tag; and

(v) a Class B-38 nonresident college student antlerless elk B tag.

(2) (a) The holder of a license purchased pursuant to this section is entitled to use that license to hunt or fish, as relevant, and to possess the carcass of the species taken in the manner prescribed by the rules and regulations of the commission and department.

(b) A student may not purchase a license pursuant to this section for more than 4 license years.

(3) (a) To qualify for a license issued pursuant to this section, a student may not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country and must:

(i) be currently enrolled as a full-time undergraduate student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time;

(ii) be currently enrolled as a full-time graduate student at a postsecondary educational institution in the state, with 9 credits or more being considered full-time unless otherwise defined by the academic department in which the student is enrolled; or

(iii) (A) have a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(B) have a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has a high school equivalency diploma issued in Montana; and

(C) be currently enrolled as a full-time student at a postsecondary educational institution in another state.

(b) A student is not eligible to receive a license pursuant to this section if the student is enrolled in a degree program that is exclusively delivered online.

(4) Application for a license issued pursuant to this section may be made after the second Monday in September ~~at any department regional office or at the department headquarters in Helena~~. To qualify, the applicant shall ~~present~~ *supply* a *copy of a* valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.

(5) Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511."

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

Approved March 16, 2023

# CHAPTER NO. 70

[HB 142]

AN ACT REVISING LAWS RELATED TO UNEMPLOYMENT INSURANCE AND FALSE CLAIMS; ENSURING APPROPRIATE RESTITUTION FOR FALSE CLAIMS; CLARIFYING THAT THEFT FROM UNEMPLOYMENT INSURANCE IS THEFT FROM A PUBLIC AGENCY; AND AMENDING SECTIONS 39-51-3202 AND 45-6-301, MCA.

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

**Section 1.** Section 39-51-3202, MCA, is amended to read:

"**39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- criminal penalty.** (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203 *and 45-7-210*, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)(a).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. 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."

**Section 2.** 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 *51 or* 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) 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.

(7) (a) Except as provided in subsections (7)(b) and (7)(d), a person convicted of a first offense of the offense of theft of property not exceeding $1,500 in value shall be fined an amount not to exceed $500. A person convicted of a second offense 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. A person convicted of a third or subsequent offense shall be fined an amount not to exceed $500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

(b) (i) Except as provided in subsection (7)(c), a person convicted of the offense of theft of property that exceeds $1,500 in value and does not exceed $5,000 in value shall be fined an amount not to exceed $1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of

a second offense shall be fined an amount not to exceed $1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed $5,000.

(ii) A person convicted of the theft of property exceeding $5,000 in value or as part of a common scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs, shall be fined an amount not to exceed $10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than $5,000 or more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(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.

(d) A person convicted of a first offense for the offense of theft of property not exceeding $1,500 in value and who utilized an emergency exit in furtherance of that offense 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. On a second conviction, the offender shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed $5,000 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

(8) 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.

(9) A person convicted of the offense of theft of property not exceeding $100 in value is presumed to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or felony offense in the past 5 years."

Approved March 16, 2023

# CHAPTER NO. 71

[HB 162]

AN ACT ALLOWING ELECTRONIC VALIDATION FOR ALL SPECIES THAT REQUIRE A CARCASS TAG; AMENDING SECTION 87-2-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-119, MCA, is amended to read:

"**87-2-119. Electronic validation of hunting licenses and tags -- rulemaking.** (1) A hunter may electronically validate any hunting license or tag issued electronically pursuant to this chapter for ~~a game animal or wild turkey~~ *any species for which a carcass tag is issued*.

(2) Electronic validation of licenses pursuant to this section may not include the collection of hunter location data through the use of a global positioning system.

(3) The department may adopt rules to implement this section. Except as provided in 87-3-310, the department may adopt rules regarding the possession of a ~~game animal or wild turkey~~ *species* for which a license or tag was electronically validated."

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

Approved March 16, 2023

# CHAPTER NO. 72

[HB 169]

AN ACT CLARIFYING CONFIRMATION REQUIREMENTS FOR INTERIM JUDICIAL APPOINTEES; AMENDING SECTION 3-1-906, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 3-1-906, MCA, is amended to read:

"**3-1-906. Senate confirmation -- exception -- nomination in interim -- appointment contingent on vacancy.** (1) (a) Except as provided in subsection (2):

(i) each appointment must be confirmed by the senate; and

(ii) an appointment made while the senate is not in session is effective until the end of the next ~~special or~~ regular legislative session.

(b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed, the office is vacant and another selection of nominees and appointment must be made.

(2) The following appointments are not subject to senate confirmation, and there must be an election for the office at the general election immediately preceding the scheduled expiration of the term or following the appointment, as applicable:

(a) an appointment made while the senate is not in session if the term to which the appointee is appointed expires prior to the next *regular* legislative session, regardless of the time of the appointment in relation to the candidate filing deadlines for the office; and

(b) an appointment made while the senate is not in session if a general election will be held prior to the next *regular* legislative session and the appointment is made prior to the candidate filing deadline for primary elections under 13-10-201(7), in which case the position is subject to election at the next primary and general elections.

(3) A nomination is not effective unless a vacancy in office occurs."

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

Approved March 16, 2023

# CHAPTER NO. 73

[HB 170]

AN ACT REPEALING THE STATE ENERGY POLICY; REPEALING SECTIONS 90-4-1001 AND 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

90-4-1001. State energy policy goal statements.

90-4-1003. Energy policy development process.

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

Approved March 16, 2023

# CHAPTER NO. 74

[SB 103]

AN ACT REVISING INSURANCE REQUIREMENTS FOR AIRPORT COURTESY CAR GRANT RECIPIENTS; AMENDING SECTION 67-10-904, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 67-10-904, MCA, is amended to read:

"**67-10-904. Responsibilities and obligations of municipality and third party.** (1) A municipality may apply to the department for a grant to provide courtesy car services at a qualified airport. The municipality may procure a third party and assign the third party to a qualified airport to manage the courtesy car program. A third party may be a fixed base operator, an airport manager, a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3), or other responsible party. The municipality shall ensure that the third party is familiar with and complies with all conditions of the courtesy car program.

(2) A municipality or third party may not provide a courtesy car for use by local residents or airport personnel except to facilitate incidental maintenance of the courtesy car.

(3) A courtesy car may be used only between the awarded airport and the local trading or recreation area. Travel in a courtesy car across the state line or beyond the local trading or recreation area is prohibited.

(4) A courtesy car must be kept at the awarded airport when not in use and must be available for users who fly into the airport.

(5) ~~(a)~~ The recipient of the courtesy car grant shall procure liability insurance ~~to protect itself and the department from risk of loss. Liability insurance limits must be a minimum of $750,000 for each claim and $1.5 million for each occurrence, as provided in 2-9-108. The department must be named as an additional insured~~ *as required by 61-6-301*

~~(b) Claims and actions against the courtesy car owner are subject to and are governed by Title 2, chapter 9, part 3.~~

(6) A courtesy car may not be used unless the municipality or the third party has obtained certification that the user has personal motor vehicle liability insurance coverage as required in 61-6-301.

(7) For airports owned, maintained, or operated by the state, the department may distribute grant money to a third party to purchase a courtesy car for use to and from the state airport as long as the department ensures the third party is familiar with and complies with all conditions of the courtesy car program.

(8) In accordance with federal and state nondiscrimination laws and requirements, all vehicles purchased with grant funds from the courtesy car program or vehicles donated to the courtesy car program must be accessible

to persons with disabilities or the grantee must provide a vehicle accessible to persons with disabilities ~~upon~~ *on* request."

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

Approved March 16, 2023

# CHAPTER NO. 75

[HB 51]

AN ACT GENERALLY REVISING LIVESTOCK INDEMNITY PROVISIONS; CREATING A STATUTORY APPROPRIATION FOR AN INDEMNITY FUND FOR DEPOPULATION ASSOCIATED WITH CERTAIN DISEASES; REVISING CLASSIFICATION CRITERIA FOR ANIMALS ELIGIBLE FOR COMPENSATION; REVISING THE CLAIMS PROCESS; CREATING A STATE SPECIAL REVENUE ACCOUNT; REVISING THE SALE OF A CONDEMNED CARCASS; REMOVING COUNTY OBLIGATION FROM INDEMNITY PAYMENTS; AMENDING SECTIONS 17-7-502, 81-2-201, 81-2-203, 81-2-204, 81-2-208, 81-2-209, AND 81-2-210, MCA; REPEALING SECTIONS 81-2-202, 81-2-205, 81-2-206, AND 81-2-207, 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: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; *81-2-203;* 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505;

[85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 2.** Section 81-2-201, MCA, is amended to read:

"**81-2-201. Classification of animals as to compensation for slaughter.** Animals slaughtered *due to disease* under the direction of the department by order of the board ~~are divided into two classes for the purposes of compensation:~~ *may be paid for at 100% of the appraised value.*

(1) ~~Animals determined by the department to be affected with an incurable disease that are destroyed by order of the board are designated as animals of class 1, and unless otherwise provided, each of the animals must be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or the owner's agent. Each animal directed to be destroyed must be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration must be given to its breeding value as well as~~

~~its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there must be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to $5 for the group appraisal, one-half of which must be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of $100 for a registered purebred animal or the sum of $50 for a grade animal. Animals presented for appraisal as purebreds must be accompanied by their registration papers at the time of appraisal, or they must be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers must accompany the claim for indemnity.~~ *Eligible animals include cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry.*

(2) ~~Animals of class 1 must be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed $100 for a registered purebred animal or $50 for a grade animal.~~ *Diseases for which animals are eligible for indemnity include foreign animal diseases as classified by the United States department of agriculture, bovine tuberculosis, brucellosis, and chronic wasting disease.*

~~(3) Animals that are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and that are destroyed by order of the department as a sanitary safeguard are designated as animals of class 2, and each animal must be paid for on the basis of its full appraised value. The appraised value must be determined in the manner set out in subsection (1). The appraisal of the animals must be based on the meat, dairy, or breeding value of the animal, but when appraisal is based on breeding value of the animal, an appraisal may not exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. An indemnity for a class 2 animal may not be paid by a county. In the case of destruction of an animal afflicted with brucellosis, also known as Bang's disease, an indemnity may not be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of $100 for a registered purebred animal or $50 for a grade animal. In all cases in which the federal government or an agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state must be determined under 81-2-210.~~

~~(4)~~*(3)* Animals that are injured or killed while they are being inspected or tested under an order of the department or its agent ~~and that do not come within either class 1 or class 2~~ may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board~~. When~~ *when* it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or the owner's agent~~, the whole claim, when approved, must be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for class 2 animals~~."

**Section 3.** Section 81-2-203, MCA, is amended to read:

"**81-2-203. Indemnity ~~-- from what funds paid~~** ***special revenue account -- purpose -- uses.*** ~~In payment for animals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county.~~ *(1) There is an account in the state special revenue fund established by 17-2-102 to be known as the indemnity special revenue account. The account is administered by the department.*

*(2) The department may deposit in the indemnity special revenue account an amount up to $10,000 annually. The principal may not exceed $100,000, and interest earned in the account is retained.*

*(3) Funds are statutorily appropriated to the department, as provided in 17-7-502, for the purpose of indemnity payments as authorized in 81-2-201.*"

**Section 4.** Section 81-2-204, MCA, is amended to read:

"**81-2-204. Presentation of claims for indemnity.** Claims against the state ~~and county~~ that arise from the destruction of animals or property by order of the department ~~must be made on forms provided by the department. They~~ must contain an affidavit by the owner or the owner's agent with knowledge of the animal or property, certifying to the ownership of the animal or property, ~~the county in which they are owned,~~ and that the animal or property has been destroyed under the law and the rules of the department. ~~These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed.~~ The claims must ~~also~~ be accompanied by a certificate of appraisal ~~as appraisal is determined under 81-2-201,~~ together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal."

**Section 5.** Section 81-2-208, MCA, is amended to read:

"**81-2-208. Sale of condemned carcasses -- disposition of proceeds.** When the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner must receive the net proceeds from the sale of the carcass. The proceeds must be deducted from the owner's claim against the state and county for the slaughter. ~~A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms that the representative considers to be in the best interests of this state, and the net proceeds obtained from the sale must be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due the owner.~~"

**Section 6.** Section 81-2-209, MCA, is amended to read:

"**81-2-209. When no indemnity.** (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state that violate this chapter or rules of the department;

(c) animals that the owner or claimant knew to be diseased or had notice of the disease at the time they came into the owner's or claimant's possession;

(d) animals that had the disease for which they were slaughtered or that were destroyed because of exposure to the disease at the time of their arrival in this state~~. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.~~*;*

(e) animals that have not been in this state for at least 120 days before the discovery of the disease~~. However, class 2 animals that have not been in the state for 120 days may be paid for when payment is authorized by the department.~~*;*

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease that requires them to be destroyed by order of the department.

(2) Compensation or indemnity will not be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease."

**Section 7.** Section 81-2-210, MCA, is amended to read:

"**81-2-210. Compensation from federal government or other agency.** (1) If the federal government or an agency other than the state ~~or county~~ compensates the owner for livestock or property destroyed by order of the department, the amount of the compensation from the federal government or other agency ~~shall~~ *must* be deducted from the owner's claim as filed against the state ~~and county~~, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

(2) If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government or compensating agency other than the state ~~or county~~, by violation of the rules of the federal government or other agency, an amount equal to the indemnity, which would have been paid by the federal government or other indemnifying agency but for the forfeiture ~~shall~~ *must* also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value."

**Section 8. Repealer.** The following sections of the Montana Code Annotated are repealed:

81-2-202. Payment for other personal property.
81-2-205. Indemnity for class 2 animals in state less than 120 days.
81-2-206. Verification and payment of claims.
81-2-207. Payment from county funds.

**Section 9. Effective date.** [This act] is effective July 1, 2023.

Approved March 16, 2023

# CHAPTER NO. 76

[SB 20]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE TAXATION LAWS; ELIMINATING THE PENNY TAX; PROVIDING FOR DEFICIENCY ASSESSMENTS; PROVIDING PROCEDURES TO COMPUTE ALCOHOLIC BEVERAGE TAXES IN THE ABSENCE OF STATEMENTS; PROVIDING AUTHORITY BY THE DEPARTMENT TO COLLECT DELINQUENT TAXES; PROVIDING FOR REFUNDS AND INTEREST; REVISING LAWS RELATING TO THE FILING OF FORMS; PROVIDING FOR THE FILING OF ELECTRONIC FORMS AND PROVIDING DATES; REVISING ALCOHOLIC BEVERAGE TAX LAWS PERTAINING TO BEER, WINE, AND HARD CIDER, ALCOHOL MANUFACTURED BY DISTILLERIES, AND TABLE WINE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-1-406, 16-1-411, 16-1-424, AND 16-2-301, MCA; AND REPEALING SECTION 16-1-409, MCA

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

**Section 1. Deficiency assessment -- penalty and interest -- statute of limitations.** (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the licensee a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The licensee may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) The amount of tax due under any return may be determined by the department within 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of this section, a return due under this part and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

**Section 2. Procedure to compute tax in absence of statement -- estimation of tax -- failure to pay -- penalty and interest.** (1) If the licensee fails to file any return required by this part within the time required, the department may, at any time, audit the licensee or estimate the taxes due from any information in its possession and, based on the audit or estimate, assess the licensee for the taxes, penalties, and interest due the state.

(2) The department shall impose a penalty and interest as provided in 15-1-216. The department shall mail to the licensee a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The notice must contain a statement that if payment is not made a warrant for distraint may be filed. The licensee may seek review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to 15-1-206.

**Section 3. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under this part.

(b) If a tax imposed by this part or any portion of the tax is not paid when due, the department shall impose a penalty and interest as provided in 15-1-216 and the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the licensee from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the licensee has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the licensee if a claim is required before funds are available for offset.

(5) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

**Section 4. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a result of overpayment of taxes collected under this part must be filed within 3 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

**Section 5. Department rulemaking.** The department shall prescribe rules necessary to carry out the purposes of imposing and collecting the tax on the sale of alcoholic beverages.

**Section 6.** Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler *or by a licensed brewer directly to retailers, special permittees, or the public*. ~~A barrel of beer equals 31 gallons.~~ The tax is based ~~upon~~ *on* the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 10,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30.

(b) The tax on beer sold for a brewer who produces over 10,000 barrels is $4.30.

(2) The tax imposed pursuant to subsection (1) ~~is~~ *on a wholesaler and an electronic beer tax return is* due at the end of each month from the wholesaler ~~upon~~ *on* beer sold by the wholesaler during that month. *The tax imposed pursuant to subsection (1) on a licensed brewer and an electronic beer tax return is due at the end of each quarter from the brewer for beer sold during the previous quarter.* The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund."

**Section 7.** Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents ~~per~~ *a* liter is imposed on sacramental wine and table wine, except hard cider, ~~imported by a table wine distributor and on table wine shipped directly to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107~~ *sold by:*

*(i) a table wine distributor to licensed retailers, agency liquor stores, and special permit holders;*

*(ii) a licensed winery directly to licensed retailers, special permit holders, or the public; and*

*(iii) a registered winery directly to the public.*

(b) A tax of 3.7 cents ~~per~~ *a* liter is imposed on hard cider ~~imported~~ *sold:*

*(i)* by a table wine distributor *to licensed retailers, agency liquor stores, and special permit holders;*

*(ii) by a licensed winery directly to retailers, special permit holders, or the public; and*

*(iii) by a registered winery directly to the public* ~~and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107~~.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month during the following period that begins October 1 and ends September 30.

(b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on or before October 15 of the following period that begins October 1 and ends September 30.

(c) A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to consumers or licensed retailers in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th of each month for sales in the previous month.

(d) A table wine distributor that sells sacramental wine, table wine, or hard cider in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month for sales in the previous month.

~~(3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects the winery or the table wine distributor to the penalties and interest provided for in 15-1-216.~~

~~(4)~~*(3)* The tax paid by a winery or by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

~~(5)~~*(4)* The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

~~(6)~~*(5)* For *the* purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

**Section 8.** Section 16-1-424, MCA, is amended to read:

"**16-1-424. Distillery -- reporting -- tax payment -- penalties.** (1) Except as provided in subsection ~~(9)~~ *(3)*, a distillery licensed to do business in this state under 16-4-311 shall, on or before the 15th day of each month, ~~in the manner and~~ *electronically on a* form prescribed by the department, make an exact return to the department reporting the total amount of liquor samples provided with or without charge at the distillery in the previous month. The department may at any time make an examination of the distillery's books and of the premises and may otherwise check the accuracy of the return.

(2) The taxes imposed pursuant to 16-1-401 and 16-1-404 ~~upon~~ *on* a distillery licensed under 16-4-311 are due on or before the 15th day of each month from the distiller for liquor sold during the previous month. The department shall adopt rules and provide forms for the proper allocation of taxes.

~~(3) If a distiller subject to the payment of the taxes provided for in 16-1-401 and 16-1-404 fails to make any return required by this code or fails to make payment of the taxes within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of taxes due the state from the delinquent distiller.~~

~~(4) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.~~

~~(5) If all or part of the tax imposed upon a distillery by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.~~

~~(6) An action may not be maintained to enjoin the collection of the tax or any part of the tax.~~

~~(7) Any tax owed by a distiller under this code that is not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.~~

~~(8) Except as provided in subsection (9), a distiller who fails, neglects, or refuses to make the return to the department provided for in this section, refuses to allow the examinations as provided for in this section, or fails to make an accurate return in the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding $1,000.~~

~~(9)~~*(3)* A distillery for which the tax is less than $10 a month from the sale of samples is not required to file a return or pay the tax for that month under this section."

**Section 9.** Section 16-2-301, MCA, is amended to read:

"**16-2-301. Retail selling price on table wine -- tax on certain table wine.** ~~(1)~~ The retail selling price at which table wine is sold at an agency liquor store is as determined by the agent.

~~(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.~~

~~(3) For the purposes of this section, "table wine" does not include hard cider.~~"

**Section 10. Repealer.** The following section of the Montana Code Annotated is repealed:

16-1-409. Failure to make beer tax returns -- penalties and interest.

**Section 11. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 16, chapter 1, part 4, and the provisions of Title 16, chapter 1, part 4, apply to [sections 1 through 5].

Approved March 23, 2023

# CHAPTER NO. 77

[SB 91]

AN ACT ELIMINATING JAIL PENALTIES FOR LITTERING; AND AMENDING SECTION 75-10-233, MCA.

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

**Section 1.** Section 75-10-233, MCA, is amended to read:

"**75-10-233. Dumping penalty -- enforcement.** (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding ~~$100~~ *$500* ~~or imprisoned in the county jail for a period not exceeding 30 days, or both~~.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of 75-10-212 must be enforced by all highway patrol officers, sheriffs, and police officers and by all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted."

Approved March 23, 2023

# CHAPTER NO. 78

[SB 134]

AN ACT REVISING LAWS RELATED TO INJUNCTIONS; PROVIDING ADDITIONAL DEADLINES FOR TEMPORARY RESTRAINING ORDERS WITHOUT NOTICE; AND AMENDING SECTIONS 27-19-316, 27-19-317, AND 27-19-318, MCA.

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

**Section 1.** Section 27-19-316, MCA, is amended to read:

"**27-19-316. Contents and filing of restraining order granted without notice.** Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why the injury is irreparable and why the order was granted without notice; ~~and~~

(4) except as provided in 40-4-121 or Title 40, chapter 15, expire ~~by its terms within the time after entry, not to exceed 10 days, as the court or judge fixes~~ *after 10 days and is not enforceable after 10 days unless extended under 27-19-317*."

**Section 2.** Section 27-19-317, MCA, is amended to read:

"**27-19-317. Extension of expiration date.** The time fixed in the order for its expiration may be extended, for good cause shown, for ~~a like period~~ *10 days* or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record."

**Section 3.** Section 27-19-318, MCA, is amended to read:

"**27-19-318. Application for injunction to be heard without delay.** *(1)* Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character.

*(2)* At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if the party does not do so, the court or judge shall dissolve the temporary restraining order.

*(3) The hearing must be held within 20 days of issuance of the temporary restraining order.*

*(4) If the hearing is not held within 20 days, the temporary restraining order automatically expires unless:*

*(a) the parties stipulate in writing to an extension; and*

*(b) the stipulation is filed with the court.*

*(5) After the hearing, the court may extend the temporary restraining order for 21 days.*

*(6) If the judge fails to address whether a bond is required during the hearing, the temporary restraining order is invalid and unenforceable.*

*(7) If the court has not ruled on the preliminary injunction within 21 days of the hearing on the temporary restraining order, the preliminary injunction is considered denied unless otherwise stipulated in writing by the parties.*"

Approved March 23, 2023

# CHAPTER NO. 79

[SB 135]

AN ACT REVISING LAWS RELATED TO INJUNCTIONS; PROVIDING THAT AN INJUNCTION MAY NOT BE GRANTED REGARDING AN ADMINISTRATIVE RULE BEFORE THE RULE IS ISSUED; AMENDING SECTION 27-19-103, 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 27-19-103, MCA, is amended to read:

"**27-19-103. When injunction may not be granted.** An injunction cannot be granted:

(1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

(2) to stay proceedings in a court of the United States;

(3) to stay proceedings in another state upon a judgment of a court of that state;

(4) to prevent the execution of a public statute by officers of the law for the public benefit;

(5) to prevent the breach of a contract the performance of which would not be specifically enforced;

(6) to prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

(7) to prevent a legislative act by a municipal corporation;

(8) in labor disputes under any other or different circumstances or conditions than if the controversy were of another or different character or between parties neither or none of whom were laborers or interested in labor questions*;*

*(9) to prevent the secretary of state from issuing a temporary or final administrative rule before the administrative rule is issued.*"

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

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences on or after January 1, 2021.

Approved March 23, 2023

# CHAPTER NO. 80

[SB 136]

AN ACT REVISING LAWS RELATED TO INJUNCTIONS; AND PROVIDING THAT IF A CONSTRUCTION PROJECT IS ENJOINED THAT THE PROPERTY MAY BE SECURED AND PROTECTED FROM DAMAGE.

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

**Section 1. Secure construction site -- provide for safety.** If the court grants a preliminary injunction or restraining order and the party against whom the injunction or restraining order is asserted is performing construction work, remodeling or renovating a property, or constructing a structure, building, or improvement, the court shall:

(1) allow the party who is enjoined or restrained to protect the property from damage; and

(2) provide for the safety of the property and any construction work on the property.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 19, part 3, and the provisions of Title 27, chapter 19, part 3, apply to [section 1].

Approved March 23, 2023

# CHAPTER NO. 81

[HB 21]

AN ACT REVISING THE PROCESS FOR ADOPTION OF SCHOOL ACCREDITATION STANDARDS; REQUIRING THAT ECONOMIC IMPACT STATEMENTS FOR CERTAIN ACCREDITATION STANDARDS INCLUDE AN ANALYSIS OF THE TIME REQUIRED FOR IMPLEMENTATION; REASSIGNING THE REVIEW OF ECONOMIC IMPACT STATEMENTS TO LEGISLATIVE BUDGET COMMITTEES; REQUIRING THE BOARD OF PUBLIC EDUCATION TO REQUEST THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO SEEK FUNDING FOR STANDARDS DETERMINED DURING THE LEGISLATIVE INTERIM TO REQUIRE SUBSTANTIAL EXPENDITURES; AMENDING SECTION 20-7-101, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1.** Section 20-7-101, MCA, is amended to read:

"**20-7-101. (Temporary) ~~Standards of accreditation~~ *Accreditation standards -- process for adoption.*** (1) ~~Standards of accreditation~~ *(a) Accreditation standards, as defined in 20-1-101,* for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). ~~The~~ *For an accreditation standard that*

*requires implementation by school districts, the* recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

*(b) For accreditation standards addressing academic requirements, program area standards, or content and performance standards, the economic impact statement under subsection (1)(a) must include an analysis of the ability of school districts to implement the standard within existing resources, including time. The intent of this subsection (1)(b) is to ensure that school districts have the capacity to adhere to required accreditation standards within a basic system of free quality public elementary and secondary schools.*

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

(a) school district trustees;

(b) school administrators;

(c) teachers;

(d) school business officials;

(e) parents; and

(f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to*:*

*(a) during a regular legislative session, the joint appropriations subcommittee on education; or*

*(b) during the legislative interim,* the education interim *budget* committee *established in 5-12-501,* for review at least 1 month in advance of a scheduled committee meeting. ~~Information provided during an interim must be provided to the legislature in accordance with 5-11-210.~~

(4) Unless the expenditures by school districts required under the proposal are determined by the ~~education interim~~ *appropriate* committee *under subsection (3)* to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following*:*

*(a) under subsection (3)(a), the current legislative session; or*

*(b) under subsection (3)(b),* the next regular legislative session and shall request *the superintendent of public instruction include a request in the superintendent's budget* that the same legislature fund implementation of the proposed standard.

*(5) The provisions of this section may not be construed to reduce or limit the authority of the education interim committee to review administrative rules, including accreditation standards, within its jurisdiction pursuant to 5-5-215.*

~~(5)~~*(6)* Standards for the retention of school records must be as provided in 20-1-212. (Terminates December 31, 2025--sec. 5, Ch. 81, L. 2021.)"

**Section 2.** Section 20-7-101, MCA, is amended to read:

"**20-7-101. ~~Standards of accreditation~~ *Accreditation standards – process for adoption.*** (1) ~~Standards of accreditation~~ *(a) Accreditation standards, as defined in 20-1-101,* for all schools must be adopted by the board of public education upon the recommendations of the superintendent

of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). ~~The~~ *For an accreditation standard that requires implementation by school districts, the* recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

*(b) For accreditation standards addressing academic requirements, program area standards, or content and performance standards, the economic impact statement under subsection (1)(a) must include an analysis of the ability of school districts to implement the standard within existing resources, including time. The intent of this subsection (1)(b) is to ensure that school districts have the capacity to adhere to required accreditation standards within a basic system of free quality public elementary and secondary schools.*

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

(a) school district trustees;

(b) school administrators;

(c) teachers;

(d) school business officials;

(e) parents; and

(f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to*:*

*(a) during a regular legislative session, the joint appropriations subcommittee on education; or*

*(b) during the legislative interim,* the ~~education interim~~ *legislative finance* committee*, established in 5-12-201,* for review at least 1 month in advance of a scheduled committee meeting. ~~Information provided during an interim must be provided to the legislature in accordance with 5-11-210.~~

(4) Unless the expenditures by school districts required under the proposal are determined by the ~~education interim~~ *appropriate* committee *under subsection (3)* to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following*:*

*(a) under subsection (3)(a), the current legislative session; or*

*(b) under subsection (3)(b),* the next regular legislative session and shall request *the superintendent of public instruction include a request in the superintendent's budget* that the same legislature fund implementation of the proposed standard.

*(5) The provisions of this section may not be construed to reduce or limit the authority of the education interim committee to review administrative rules, including accreditation standards, within its jurisdiction pursuant to 5-5-215.*

~~(5)~~*(6)* Standards for the retention of school records must be as provided in 20-1-212."

**Section 3. Coordination instruction.** If both House Bill No. 110 and [this act] are passed and approved, then [sections 2, 4, and 5 of this act] are void, and [this act] is effective on passage and approval.

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective January 1, 2026.

**Section 5. Termination.** [Section 1] terminates December 31, 2025.

Approved March 23, 2023

# CHAPTER NO. 82

[HB 92]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO ACCEPT A LICENSED ADDICTION COUNSELOR'S ASSESSMENT IN DETERMINING WHETHER TO RESTORE DRIVING PRIVILEGES FOR INDIVIDUALS CONVICTED OF AN OFFENSE INVOLVING DRIVING UNDER THE INFLUENCE; AMENDING SECTION 61-5-208, 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 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in ~~subsection~~ *subsections* (4) *and (5)* of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-1002 within the time period specified in 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-1010. ~~If~~ *Except as provided in subsection (5), if* the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-1002, the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-1002 within the time period specified in 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-1010. ~~If~~ *Except*

*as provided in subsection (5), if* the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-1002, the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-1002 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

*(5) If a person has not completed the chemical dependency treatment required under 61-8-1009 before the end of the period of suspension or revocation required under this section, the department may restore or renew the person's driving privilege if:*

*(a) the person completed the chemical dependency assessment required under 61-8-1009; and*

*(b) the licensed addiction counselor conducting the assessment determined that treatment was not necessary.*

~~(5)~~*(6)* (a) A driver's license that is issued after a license revocation to a person described in subsection ~~(5)(b)~~ *(6)(b)* must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection ~~(5)(a)~~ *(6)(a)* apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-1008, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**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 an individual who met the requirements of 61-5-208(5) on or after July 1, 2022.

Approved March 23, 2023

# CHAPTER NO. 83

[HB 167]

AN ACT PROVIDING THAT EXEMPT STAFF FOR LEGISLATIVE LEADERSHIP MAY USE PUBLIC TIME, FACILITIES, EQUIPMENT, SUPPLIES, PERSONNEL, OR FUNDS TO SUPPORT NONELECTION POLITICAL CAUCUS ACTIVITY REGARDING LEGISLATIVE BUSINESS; AMENDING SECTION 2-2-121, 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) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) *(i)* 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)~~*(A)* 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)~~*(B)* in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

*(ii) It is a properly incidental activity for personal staff of legislative leadership who are exempt as provided in 2-18-104 to support nonelection political caucus activity involving legislative business in the normal course of duties as directed by legislative leadership.*

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

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

Approved March 23, 2023

# CHAPTER NO. 84

[HB 178]

AN ACT REVISING WORKERS' COMPENSATION LAWS RELATING TO WHEN THE EMPLOYEE IS ENGAGING IN SOCIAL OR RECREATIONAL ACTIVITY; REVISING LAWS RELATING TO EMPLOYEE INJURIES DURING SOCIAL OR RECREATIONAL ACTIVITIES AT THE WORKSITE OF THE EMPLOYER; AMENDING SECTION 39-71-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 39-71-407, MCA, is amended to read:

"**39-71-407. (Temporary) Liability of insurers -- limitations.** (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in ~~a~~ *an unpaid* social or recreational activity, regardless of whether the employer pays for any portion of the activity *or whether the activity occurs at the worksite of the employer*. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity ~~or~~ *and* whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b)~~,~~*:*

*(i)* "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties*; and*

*(ii) "social or recreational activity" means an activity that is generally undertaken by individuals for exercise, relaxation, pleasure, or voluntary or optional preparation related to the employment*.

(3) (a) Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(c) Objective medical findings are sufficient for a presumptive occupational disease as defined in 39-71-1401 but may be overcome by a preponderance of the evidence.

(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is

necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.

(b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the accident and if the testing procedures comply with federal drug testing statutes and administrative regulations applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption that the major contributing cause of the accident was the employee's use of drugs not prescribed by a physician.

(6) (a) An employee who has received written certification, as defined in 16-12-502, from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in 16-12-102, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

(7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

(8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-1402, an employee is not eligible for benefits payable

under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is diagnosed and meets the conditions of 39-71-1401 and 39-71-1402.

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational disease is not the same as a presumptive occupational disease.

(13) When compensation is payable for an occupational disease or a presumptive occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease or presumptive occupational disease was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease or a presumptive occupational disease.

(15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(16) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)

**39-71-407. (Effective on occurrence of contingency) Liability of insurers -- limitations.** (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in ~~a~~ *an unpaid* social or recreational activity, regardless of whether the employer pays for any portion of the activity *or whether the activity occurs at the worksite of the employer*. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity ~~or~~ *and* whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b)~~,~~*:*

*(i)* "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties*; and*

*(ii) "social or recreational activity" means an activity that is generally undertaken by individuals for exercise, relaxation, pleasure, or voluntary or optional preparation related to the employment*.

(3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) 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.

(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.

(b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the accident and if the testing procedures comply with federal drug testing statutes and administrative regulations applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption that the major contributing cause of the accident was the employee's use of drugs not prescribed by a physician.

(6) (a) An employee who has received written certification, as defined in 16-12-502, from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition,

as defined in 16-12-102, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

(7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

(8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(10) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

(13) 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.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

(15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(16) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

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

Approved March 23, 2023

# CHAPTER NO. 85

[HB 183]

AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT TO INCREASE REASONABLE FUNERAL EXPENSES FOR THE VICTIM; INCREASING THE FUNERAL EXPENSES FROM $3,500 TO $10,000; AMENDING SECTION 53-9-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 53-9-128, MCA, is amended to read:

"**53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the office for the injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the office determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding ~~$3,500~~ *$10,000*, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly compensation benefits in an amount determined by the office not to exceed $100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(e), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(e), the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) Subject to the limitations in subsection (9)(e), the parent or guardian of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to:

(i) claim benefits under subsection (1);

(ii) mileage at the rate allowed by the internal revenue service for the current year; and

(iii) if not receiving benefits under subsection (9)(c)(i), actual wage loss reimbursement for wage loss incurred taking the minor victim to mental health or medical treatment received as a result of that criminally injurious conduct.

(d) Subject to the limitations in subsection (9)(e), minor children who were present in a home where domestic violence occurred are entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(e) Total payments made under subsections (9)(a) through (9)(d) may not exceed $5,000 or 12 consecutive months of treatment for each person, whichever occurs first."

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

Approved March 23, 2023

# CHAPTER NO. 86

[HB 28]

AN ACT REVISING LEGISLATOR EXPENSE REIMBURSEMENTS; PROVIDING FOR LEGISLATOR PER DIEM PAYMENTS EQUAL TO THE AMOUNT RECEIVED BY FEDERAL EMPLOYEES; AMENDING SECTION 5-2-301, 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 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate for an employee earning $10.33 an hour when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) ~~Subject to subsection (4), legislators~~ *Legislators* are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for *lodging, breakfast, lunch, dinner, and incidental* expenses incurred in attending a session. *The amount of the daily allowance is equal to the amount an employee of the executive branch of the federal government is generally entitled to receive as per diem for lodging, breakfast, lunch, dinner, and incidental expenses while away from home in the city of Helena but serving in the United States.* Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

~~(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost-of-living increase to reflect inflation that is calculated pursuant to 2-15-122(5)(a), or 5%, whichever is less. The expense allowance is effective when the next regular~~

~~session of the legislature in which the legislators serve is convened under 5-2-103.~~

~~(5)~~*(4)* Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

~~(6)~~*(5)* In addition to the mileage allowance provided for in subsection ~~(5)~~ *(4)*, legislators, ~~upon~~ *on* submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

~~(7)~~*(6)* Legislators are not entitled to any additional mileage allowance under subsection ~~(5)~~ *(4)* for a special session if it is convened within 7 days of a regular session.

~~(8)~~*(7)* The department of administration shall work with the legislative services division to offer options to legislators to receive their session salary provided for in subsection (1) over the 2-year legislative term or a portion of the term. The options must be offered to all legislators in order to assist legislators to manage their income over the term. The per diem allowance and mileage as provided in this section, salary during a special session as provided in 5-3-101, and the salary during the interim as provided for in 5-2-302 may not be affected."

**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 reimbursements for daily allowances made on or after January 2, 2023.

Approved March 27, 2023

# CHAPTER NO. 87

[HB 13]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE COMPENSATION; APPROPRIATING FUNDS TO IMPLEMENT PAY REVISIONS AND PER DIEM ADJUSTMENTS; REVISING STATE EMPLOYEE PER DIEM RATES; PROVIDING THAT STATE EXECUTIVE BRANCH OFFICES ARE OPEN ON STATE GENERAL ELECTION DAYS; ELIMINATING STATE GENERAL ELECTION DAY AS A HOLIDAY FOR STATE EMPLOYEES; PROVIDING FOR AN ANNUAL FLOATING HOLIDAY FOR STATE EMPLOYEES; AMENDING SECTIONS 2-16-117, 2-18-303, 2-18-501, 2-18-601, AND 2-18-603, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 2-16-117, MCA, is amended to read:

"**2-16-117. Office hours.** (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and *the* holidays *specified in 1-1-216(1)(a) through (1)(k). State executive branch offices must be open on state general election day*. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer's office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

(4) The department of revenue may establish alternative office hours for its offices located in the various counties if:

(a) the office is staffed by four or fewer full-time employees;

(b) the department holds a public hearing on the alternative office hours in the county seat after providing public notice in a newspaper of general circulation published in the county at least 2 weeks prior to the hearing;

(c) the county commissioners of a county in which the department employees are located in a county building approve the proposed alternative office hours if the alternative hours are outside of the county's normal business hours;

(d) the alternative office hours are adopted by administrative rule; and

(e) the office hours adopted pursuant to subsection (4)(d) are published at least two times a year in a newspaper of general circulation published in the county where the office is located."

**Section 2.** Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for administering broadband pay plan.** (1) On the first day of the first complete pay period in fiscal year ~~2022~~ *2024*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2021~~ *2023*.

(2) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(3) Effective on the first day of the first complete pay period that includes ~~November 15, 2022~~ *July 1, 2023*, the base salary of each employee must be increased by ~~55 cents~~ *$1.50* an hour *or by 4%, whichever is greater. Effective on the first day of the first complete pay period that includes July 1, 2024, the base salary of each employee must be increased by $1.50 an hour or by 4%, whichever is greater. All full-time employees must receive a one-time, lump-sum payment of $1,040 in the first full pay period after [the effective date of this act]. All employees who are regularly scheduled to work 20 hours or more a week but less than 40 hours a week must receive a one-time, lump-sum payment of $780 in the first full pay period after [the effective date of this act]. All employees who are regularly scheduled to work less than 20 hours a week must receive a one-time, lump-sum payment of $520 in the first full pay period after [the effective date of this act]. These payments are applicable for fiscal year 2023 only.*

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol,

conduct a salary survey to be used in establishing the base salary for existing and entry-level highway patrol officer positions. The county sheriff's offices and the city police departments located within the county seats of the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

**Section 3.** Section 2-18-501, MCA, is amended to read:

"**2-18-501. Meals, lodging, and transportation of persons in state service.** All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging and taxes on the allowable cost of lodging, except as provided in subsection (3), plus ~~$7.50~~ *$8.25* for the morning meal, ~~$8.50~~ *$9.25* for the midday meal, and ~~$14.50~~ *$16.00* for the evening meal except as provided in subsection ~~(10)~~ *(9)*. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana ~~and within the United States~~ *including foreign travel*, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) Except as provided in subsection ~~(10)~~ *(9)*, the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection ~~(4)(a)~~ *(2)(b)*; and

(b) lodging when the actual cost exceeds the maximum established in subsection (2)(a) ~~or (4)(a)~~.

~~(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:~~

~~(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:~~

~~(i) $7 for the morning meal, $11 for the midday meal, and $18 for the evening meal; and~~

~~(ii) $155 per night for lodging.~~

~~(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.~~

~~(5)~~*(4)* When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of $12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

~~(6)~~*(5)* The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

~~(7)~~*(6)* The provisions of this section may not be construed as affecting the validity of 5-2-301.

~~(8)~~*(7)* The department of administration shall establish policies necessary to effectively administer this section for state government.

~~(9)~~*(8)* All commercial air travel must be by the least expensive class service available.

~~(10)~~*(9)* When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

~~(11)~~*(10)* For the purposes of implementing subsection ~~(10)~~ *(9)*, the following definitions apply:

(a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels."

**Section 4.** Section 2-18-601, MCA, is amended to read:

"**2-18-601. (Temporary) Definitions.** For the purpose of this part, the following definitions apply:

(1) (a) "Accident" means an unexpected traumatic incident or unusual strain that is identifiable by time and place of occurrence and caused by a specific event on a single day or during a single work shift.

(b) The term does not include an employee's suicide.

(2) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(3) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(4) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(5) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(6) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(7) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community college, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(8) "Full-time employee" means an employee who normally works 40 hours a week.

(9) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(10) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(11) "Part-time employee" means an employee who normally works less than 40 hours a week.

(12) "Permanent employee" means a permanent employee as defined in 2-18-101.

(13) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(14) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(15) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

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

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

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

(v) is not eligible to earn the leave and holiday benefits provided in this part; and

(vi) may be discharged without cause.

(16) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (16)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

(17) "Student intern" means a student intern as defined in 2-18-101.

(18) "Temporary employee" means a temporary employee as defined in 2-18-101.

(19) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(20) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer. (Terminates June 30, 2023--sec. 10, Ch. 167, L. 2019.)

**2-18-601. (Effective July 1, 2023) Definitions.** For the purpose of this part, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community college, persons contracted as independent contractors or hired under personal services contracts, and student interns.

*(7) "Floating holiday" means an annual scheduled day off with pay as provided for in 2-18-603(3) for an employee of an agency specified in 2-18-101(1).*

~~(7)~~*(8)* "Full-time employee" means an employee who normally works 40 hours a week.

~~(8)~~*(9)* "Holiday" means*:*

*(a) for employees of an agency specified in 2-18-101(1), a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216(1)(a) through (1)(k), except Sundays; or*

*(b) for all other employees,* a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

~~(9)~~*(10)* "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

~~(10)~~*(11)* "Part-time employee" means an employee who normally works less than 40 hours a week.

~~(11)~~*(12)* "Permanent employee" means a permanent employee as defined in 2-18-101.

~~(12)~~*(13)* "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

~~(13)~~*(14)* "Seasonal employee" means a seasonal employee as defined in 2-18-101.

~~(14)~~*(15)* "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

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

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

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

(v) is not eligible to earn the leave and holiday benefits provided in this part; and

(vi) may be discharged without cause.

~~(15)~~*(16)* "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection ~~(15)(a)~~ *(16)(a)* until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

~~(16)~~*(17)* "Student intern" means a student intern as defined in 2-18-101.

~~(17)~~*(18)* "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(18)~~*(19)* "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(19)~~*(20)* "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

**Section 5.** Section 2-18-603, MCA, is amended to read:

"**2-18-603. Holidays -- observance when falling on employee's day off -- *floating holiday*.** (1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on the employee's last regularly scheduled working day immediately before the holiday or on the employee's first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker *or student intern* may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

*(3) According to policies adopted by the department of administration:*

*(a) each full-time employee of an agency specified in 2-18-101(1) is entitled to one floating holiday each calendar year;*

*(b) each part-time employee of an agency specified in 2-18-101(1) is entitled to one floating holiday each calendar year that must be calculated proportionately to the floating holiday allowed to a full-time employee;*

*(c) unused floating holiday leave expires at the end of each calendar year, does not accrue, and is not paid out to employees on termination of employment; and*

*(d) a short-term worker or student intern may not receive a floating holiday*."

**Section 6. Appropriations.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided in 2-18-303:

Fiscal Year 2023 -- One-Time-Only

| | General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|---|
| Legislative Branch | 202,199 | 27,594 | | |
| Consumer Counsel | | 5,324 | | |
| Judicial Branch | 477,315 | 19,892 | 287 | |
| Executive Branch | 5,318,037 | 5,601,004 | 1,863,596 | 111,402 |
| Montana University System | 31,809 | 456 | 25,657 | |
| Total | 6,029,360 | 5,654,270 | 1,889,540 | 111,40 |

Fiscal Year 2024

| | General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|---|
| Legislative Branch | 607,991 | 94,703 | | |
| Consumer Counsel | | 19,274 | | |
| Judicial Branch | 1,500,404 | 62,549 | 1,213 | |
| Executive Branch | 16,287,213 | 15,761,090 | 7,069,902 | 360,858 |
| Montana University System | 151,863 | 2,829 | 87,890 | |
| Total | 18,547,391 | 15,940,445 | 7,159,005 | 360,858 |

Fiscal Year 2025

| | General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|---|
| Legislative Branch | 1,234,471 | 191,918 | | |
| Consumer Counsel | | 39,322 | | |
| Judicial Branch | 3,016,529 | 126,222 | 2,436 | |
| Executive Branch | 34,028,318 | 31,855,010 | 14,300,816 | 726,453 |
| Montana University System | 309,821 | 5,793 | 177,071 | |
| Total | 38,589,138 | 32,218,266 | 14,480,323 | 726,453 |

(2) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided in 2-18-501:

Fiscal Year 2024 and Fiscal Year 2025

| General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|

| | | | |
|---|---|---|---|
| Legislative Branch | | | |
| 3,332 | 493 | | |
| Consumer Counsel | | | |
| | 35 | | |
| Judicial Branch | | | |
| 2,720 | 294 | | |
| Executive Branch | | | |
| 63,452 | 137,403 | 73,570 | 1,605 |
| Montana University System | | | |
| 167 | | 328 | |
| Total | | | |
| 69,671 | 138,225 | 73,898 | 1,605 |

(3) The following money for the indicated fiscal year is appropriated to the Montana university system for the sole purpose of increasing employee pay.

| Fiscal Year 2023 -- One-Time-Only | | | |
|---|---|---|---|
| General Fund | State Special | Federal Special | Proprietary |
| 3,227,045 | | | |
| Fiscal Year 2024 | | | |
| General Fund | State Special | Federal Special | Proprietary |
| 10,323,927 | | | |
| Fiscal Year 2025 | | | |
| General Fund | State Special | Federal Special | Proprietary |
| 21,598,218 | | | |

(4) The following money is appropriated for the biennium beginning July 1, 2023, from the designated state fund to the office of budget and program planning to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

| | |
|---|---|
| General Fund | $1,000,000 |
| State Special Revenue | $500,000 |
| Federal Special Revenue | $250,000 |
| Proprietary Funds | $50,000 |

(5) For the biennium beginning July 1, 2023, there is appropriated $75,000 from the general fund to the department of administration for a labor-management training initiative.

**Section 7. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 4, and 5] are effective July 1, 2023.

Approved April 11, 2023

# CHAPTER NO. 88

[HB 313]

AN ACT PROVIDING FOR INDEPENDENT PRACTICE OF PHYSICIAN ASSISTANTS; CLARIFYING COVERAGE OF PHYSICIAN ASSISTANTS UNDER HEALTHY MONTANA KIDS, HEALTH MAINTENANCE ORGANIZATIONS, AND MULTIPLE WELFARE EMPLOYER ARRANGEMENTS; AMENDING SECTIONS 33-22-114, 33-31-111, 33-35-306, 37-20-104, 37-20-203, 37-20-301, 37-20-401, 37-20-403, 37-20-404, 37-20-405, 37-20-410, 37-20-411, 50-5-1301, 50-12-102, 50-19-403, 50-20-109, AND 53-4-1005, MCA; REPEALING SECTION 37-20-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 33-22-114, MCA, is amended to read:

"**33-22-114. Coverage required for services provided by physician assistants, advanced practice registered nurses, and registered nurse first assistants.** An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage as well as payment or reimbursement for health services provided by:

(1) a physician assistant as normally covered by contracts for services supplied by a physician if health care services that the physician assistant ~~is approved to perform~~ *performs* are covered by the contract;

(2) an advanced practice registered nurse, defined in 37-8-102, as normally covered by contracts for services supplied by a physician or a physician assistant if health care services that the advanced practice registered nurse is approved to perform are covered by the contract; and

(3) a registered nurse first assistant, licensed under Title 37, chapter 8, as normally covered by contracts for surgical services supplied by a physician, a physician assistant, or an advanced practice registered nurse if surgical services that the registered nurse first assistant is approved to perform are covered by the contract."

**Section 2.** Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Other chapters and provisions of this title apply to health maintenance organizations as follows: Title 33, chapter 1, parts 6, 12, and 13; 33-2-1114;

33-2-1211 and 33-2-1212; Title 33, chapter 2, parts 13, 19, 23, and 24; 33-3-401; 33-3-422; 33-3-431; Title 33, chapter 3, part 6; Title 33, chapter 10; Title 33, chapter 12; 33-15-308; Title 33, chapter 17; Title 33, chapter 19; 33-22-107; *33-22-114;* 33-22-128; 33-22-129; 33-22-131; 33-22-136 through 33-22-139; 33-22-141 and 33-22-142; 33-22-152 and 33-22-153; 33-22-156 through 33-22-159; 33-22-180; 33-22-244; 33-22-246 and 33-22-247; 33-22-514 and 33-22-515; 33-22-521; 33-22-523 and 33-22-524; 33-22-526; and Title 33, chapter 32."

**Section 3.** Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, parts 23 and 24;

(e) 33-3-308;

(f) Title 33, chapter 7;

(g) Title 33, chapter 18, except 33-18-242;

(h) Title 33, chapter 19;

(i) 33-22-107, *33-22-114,* 33-22-128, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153;

(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;

(k) Title 33, chapter 22, part 7; and

(l) 33-22-707.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 4.** Section 37-20-104, MCA, is amended to read:

"**37-20-104. Unlicensed practice -- penalties.** (1) A person who employs a physician assistant or holds out to the public that the person is a physician assistant without 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 submitting a supervision agreement to the board~~, a physician assistant may not practice 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 5.** Section 37-20-203, MCA, is amended to read:

"**37-20-203. Licensing of physician assistants.** *(1)* The board may issue either an active or inactive license to a physician assistant applying for a license or license renewal in Montana.

*(2) A physician assistant with fewer than 8,000 hours of postgraduate clinical experience shall practice medicine with a collaborative agreement between the physician assistant and one or more collaborating providers, who may be:*

*(a) a licensed physician; or*

*(b) a licensed physician assistant with 8,000 or more hours of postgraduate clinical experience.*

*(3) "Collaborative agreement" as used in this section means the interaction and relationship that a physician assistant has with a collaborating provider as described in subsection (2), in which:*

*(a) the physician assistant and collaborating provider are cognizant of the physician assistant's qualifications and limitations in caring for patients:*

*(b) the physician assistant consults with the collaborating provider while remaining responsible for care provided by the physician assistant; and*

*(c) the collaborating provider gives direction and guidance to the physician assistant.*

*(4) A physician assistant with a collaborative agreement under subsection (2) shall:*

*(a) practice under written policies and procedures established at a practice level that:*

*(i) describe how collaboration will occur in accordance with subsection (2); and*

*(ii) describe methods for evaluating the physician assistant's competency, knowledge, and skills; and*

*(b) provide a copy of the written policies and procedures and documentation of compliance under this subsection (4) to the board upon the board's request.*

*(5) A licensed physician assistant actively practicing for 8,000 hours prior to October 1, 2023, is exempt from the collaborative agreement requirement.*"

**Section 6.** Section 37-20-301, MCA, is amended to read:

"**37-20-301. Requirements for ~~use of~~ physician assistant *practice*~~– 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 in the practice of medicine, as defined in 37-3-102, and as provided in this chapter and a physician assistant may not be employed or practice as a physician assistant unless the physician assistant:

~~(a) is supervised by a physician licensed in this state;~~

~~(b)~~*(1)* is licensed by the board;

~~(c) has submitted a physician assistant supervision agreement to the board on a form prescribed by the department; and~~

~~(d)~~*(2)* has paid to the board the applicable fees required by the board*; and*

*(3) engages in practice for which the physician assistant is educationally prepared and for which the physician assistant has achieved and maintained competency*.

~~(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 7.** 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) "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)~~*(2)* "Physician assistant" means ~~a member of a health care team, licensed by the board,~~ *an individual licensed pursuant to this chapter* who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment ~~under the supervision of a physician licensed by the board~~.

~~(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 8.** Section 37-20-403, MCA, is amended to read:

"**37-20-403. Physician assistant ~~as agent of supervising physician -- degree of supervision required --~~ scope of practice.** (1) A ~~physician assistant is considered the agent of the supervising physician with regard to all duties delegated to the~~ physician 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 as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant.~~

~~(2) 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)~~*(2)* ~~A physician assistant may~~ *A physician assistant may:*

*(a)* 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~~*;*

*(b) obtain informed consent;*

*(c) supervise, delegate, and assign therapeutic and diagnostic measures;*

*(d) certify the health or disability of a patient as required by any local, state, or federal program; and*

*(e) authenticate any document that a physician may authenticate.*"

**Section 9.** 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 may prescribe, dispense, and administer drugs ~~to the extent authorized by the 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~~ *for* a physician 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 shall maintain registration with the federal drug enforcement administration if the physician assistant is authorized ~~by the supervising physician~~ to prescribe controlled substances.

(e) A prescription written by a physician assistant must comply with regulations relating to prescription requirements adopted by the board of pharmacy."

**Section 10.** Section 37-20-405, MCA, is amended to read:

"**37-20-405. Billing.** A ~~supervising physician~~ *physician assistant*, *medical* office, firm, institution, or other entity may bill for a service provided by a ~~supervised~~ physician assistant."

**Section 11.** Section 37-20-410, MCA, is amended to read:

"**37-20-410. 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~~ *for* 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)~~*(2)* 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 12.** Section 37-20-411, MCA, is amended to read:

"**37-20-411. 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 13.** Section 50-5-1301, MCA, is amended to read:

"**50-5-1301. Definitions.** As used in this part, the following definitions apply:

(1) "Adult" means any person 18 years of age or older.

(2) "Advanced practice registered nurse" means an individual who is licensed under Title 37, chapter 8, to practice professional nursing in this state

and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(3) "Attending health care provider" means the physician, advanced practice registered nurse, or physician assistant, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(4) "Decisional capacity" means the ability to provide informed consent to or refuse medical treatment or the ability to make an informed health care decision as determined by a health care provider experienced in this type of assessment.

(5) "Health care facility" means a hospital, critical access hospital, or facility providing skilled nursing care as those terms are defined in 50-5-101.

(6) "Health care provider" means any individual licensed or certified by the state to provide health care.

(7) "Interested person" means a patient's:

(a) spouse;

(b) parent;

(c) adult child, sibling, or grandchild; or

(d) close friend.

(8) "Medical proxy decisionmaker" means a physician or advanced practice registered nurse designated by the attending health care provider.

(9) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

(10) "Physician assistant" means an individual licensed pursuant to Title 37, chapter 20~~, whose duties and delegation agreement authorizes the individual to undertake the activities allowed under this part~~.

(11) (a) "Lay proxy decisionmaker" means an interested person selected pursuant to this part authorized to make medical decisions and discharge and transfer dispositions for a patient who lacks decisional capacity.

(b) The term does not include the patient's attending health care provider."

**Section 14.** Section 50-12-102, MCA, is amended to read:

"**50-12-102. Definitions.** As used in this part, the following definitions apply:

(1) "Eligible patient" means an individual who meets the requirements of 50-12-104.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health care provider" means any of the following individuals licensed pursuant to Title 37:

(a) a physician;

(b) an advanced practice registered nurse authorized by the board of nursing to prescribe medicine; and

(c) a physician assistant ~~whose duties and delegation agreement allows the physician assistant to undertake the activities allowed under this part~~.

(4) "Investigational drug, biological product, or device" means a drug, biological product, or device that:

(a) has successfully completed phase 1 of a clinical trial but has not yet been approved for general use by the United States food and drug administration; and

(b) remains under investigation in a United States food and drug administration-approved clinical trial.

(5) "Terminal illness" means a progressive disease or medical or surgical condition that:

(a) entails significant functional impairment;

(b) is not considered by a treating health care provider to be reversible even with administration of a treatment currently approved by the United States food and drug administration; and

(c) without life-sustaining procedures, will result in death.

(6) "Written informed consent" means a written document that meets the requirements of 50-12-105."

**Section 15.** Section 50-19-403, MCA, is amended to read:

"**50-19-403. Local fetal, infant, child, and maternal mortality review team.** (1) A local fetal, infant, child, and maternal mortality review team must be approved by the department of public health and human services. Approval may be given if:

(a) the county health department, a tribal health department if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(e) includes the roles of the county health department, tribal health department, or both;

(b) a lead person has been designated for the purposes of management of the review team;

(c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team;

(d) a team reviewing a maternal death includes at least one obstetrician, one family practice physician, or one physician assistant whose ~~duties and delegation agreement~~ *experience* includes obstetrical care; and

(e) the team has developed a plan that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, child, and maternal mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative from a tribal health department, appointed by the tribal government;

(h) a representative from a neighboring county or tribal government if there is an agreement to review deaths for that county or tribe;

(i) a representative of the department of public health and human services;

(j) a forensic pathologist;

(k) a pediatrician;

(l) a family practice physician;

(m) an obstetrician;

(n) a nurse practitioner;

(o) a public health nurse;

(p) a mental health professional;

(q) a local trauma coordinator;

(r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county;

*(s) a physician assistant;* and

~~(s)~~*(t)* representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local governmental fire agency organized under Title 7, chapter 33; and

(v) the local registrar.

(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."

**Section 16.** 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) on an unborn child capable of feeling pain, except as provided in 50-20-603.

~~(2) The supervision agreement of a physician assistant may provide for performing abortions.~~

~~(3)~~*(2)* Violation of subsection (1) is a felony."

**Section 17.** Section 53-4-1005, MCA, is amended to read:

"**53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician*, physician assistant,* and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) habilitative services as defined in 53-4-1103;

(k) hearing and vision exams; and

(l) eyeglasses.

(2) The program must comply with the provisions of 33-22-153.

(3) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed $100,000 in state funds, plus any matched federal funds, each fiscal year.

(4) The department is specifically prohibited from providing payment for birth control contraceptives under this program.

(5) The department shall notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 3, Ch. 169, L. 2007; sec. 10, Ch. 97, L. 2013; sec. 5, Ch. 399, L. 2017.)"

**Section 18. Repealer.** The following section of the Montana Code Annotated is repealed:

37-20-101. Qualifications of supervising physician and physician assistant.

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 89

[HB 129]

AN ACT REVISING LAWS RELATED TO SPECIAL MOBILE EQUIPMENT EXEMPTIONS AND IDENTIFICATION DECALS; AMENDING SECTION 61-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-3-431, MCA, is amended to read:

"**61-3-431. Special mobile equipment -- exemption from registration and payment of fees and charges -- identification decal -- temporary registration permit -- publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation that owns, leases, or rents special mobile equipment, a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader and that occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-4-301 through 61-4-308 or Title 61, chapter 10, part 2. Prior to movement on the highways:

(a) each piece of equipment must display an equipment identification decal or a dealer's license plate attached to the equipment, except for motor vehicles or trailers designed and used to apply fertilizer to agricultural land that are brought into Montana for demonstration purposes;

(b) each motor vehicle or trailer designed and used to apply fertilizer to agricultural land that is brought into Montana for demonstration purposes must have a temporary registration permit conspicuously displayed.

(2) (a) Annual application for the identification decal must be made to the county treasurer before any piece of equipment is moved on the highways. Application must be made on a form furnished by the department, together with the payment of a fee of $5. The equipment for which a special mobile equipment decal or for which a temporary registration permit is sought is subject to the assessment of personal property taxes ~~on the date application is made for the decal or the date determined pursuant to subsection (4)~~. *The person, firm, partnership, or corporation applying for the decal shall report the application for the identification decal to the department of revenue. For migratory personal property described in 15-24-301(1), the* ~~The~~ personal property taxes assessed against the special mobile equipment, a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader must be paid before an identification decal may be issued. The fees collected under this section must be deposited in the state general fund, except that $25 of the temporary registration permit fee must be remitted to the department of transportation.

(b) Application must be made for a temporary registration permit as provided in subsection (1)(b). The application must be made to the county treasurer or to an authorized agent before the piece of equipment is moved on Montana highways. Application for the temporary registration permit must be made on a form furnished by the department and must be accompanied by the payment of a fee of $50, in addition to the fee required under 61-3-224.

(3) The identification decal expires on December 31 of each year. If the expired identification decal is displayed, an owner of special mobile equipment, a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification decal or receipt of the current year.

(4) (a) The temporary registration permit expires 40 days after its issuance. Special mobile equipment, a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader that remains in the state past the expiration of the permit is subject to the assessment of personal property taxes, starting on the first day following expiration of the permit.

(b) If the holder of a temporary registration permit leases or sells the piece of equipment during the term that is covered by the permit, the permit is no longer valid and the special mobile equipment, motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or log loader is subject to the assessment of personal property taxes, starting on the first day of the lease or the date of the sale.

(5) Publicly owned special mobile equipment, motor vehicles or trailers designed and used to apply fertilizer to agricultural land, or log loaders and implements of husbandry used exclusively by an owner in the conduct of the owner's farming operations are exempt from this section."

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

Approved April 18, 2023

# CHAPTER NO. 90

[HB 131]

AN ACT REMOVING THE 24-HOUR WAIT REQUIREMENT TO USE A WOLF LICENSE; AMENDING SECTIONS 87-2-523 AND 87-2-524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-2-523, MCA, is amended to read:

"**87-2-523. Class E-1--resident wolf license.** (1) Except as otherwise provided in this chapter and in subsection (2) of this section, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $12, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) A resident holder of a Class AAA combination sports license, regardless of whether it includes a Class A-6 bear tag, may purchase the first Class E-1 license the person obtains in that license year for $10.

~~(3) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.~~

~~(4)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

**Section 2.** Section 87-2-524, MCA, is amended to read:

"**87-2-524. Class E-2--nonresident wolf license.** (1) Except as otherwise provided in this chapter and in subsection (2) of this section, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $50, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) A nonresident holder of a valid Class B-10 nonresident big game combination license or Class B-11 deer combination license may purchase the first Class E-2 license the person obtains in that license year for one-half the cost.

~~(3) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.~~

~~(4)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

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

Approved April 18, 2023

# CHAPTER NO. 91

[HB 134]

AN ACT AUTHORIZING FUNDS IN THE MONTANA NATIONAL GUARD LAND PURCHASE ACCOUNT TO BE USED FOR PROJECT DESIGN; AND AMENDING SECTION 10-1-108, MCA.

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

**Section 1.** Section 10-1-108, MCA, is amended to read:

"**10-1-108. Armories -- acquisition and sale -- proceeds -- account -- utilities easements.** (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

(3) (a) There is a Montana national guard land purchase account in the state special revenue fund. If the state sells an armory, the money from the sale must be deposited in the account.

(b) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes described in subsection (4).

(c) Any interest and income accruing on the account must be deposited in the state general fund.

(4) ~~(a)~~ Money in the account *is expendable solely on the authorization of the governor and* may be used for*:*

*(a)* preparations to purchase or the purchase of land necessary for the Montana national guard's mission ~~and is expendable solely upon the authorization of the governor.~~*;*

*(b) project design of construction projects allowed in subsection (4)(c); and*

~~(b)~~*(c)* ~~Money in the account may be used for the~~ construction of facilities necessary for the Montana national guard's mission subject to the provisions of the state long-range building program and 18-2-102. Money in the account may not be expended for construction unless the balance of the account, after any proposed construction expenses are deducted, is at least $250,000.

(5) The department may accept the in-kind provision of services or materials, or both, as consideration equal to or exceeding the full market value of any utilities easement on real property used by the department for an armory or military facility."

Approved April 18, 2023

# CHAPTER NO. 92

[HB 143]

AN ACT REVISING THE COMPOSITION OF THE TOURISM ADVISORY COUNCIL; AMENDING SECTION 2-15-1816, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1816, MCA, is amended to read:

"**2-15-1816. Tourism advisory council.** (1) There is created a tourism advisory council.

(2) The council is composed of not ~~less than 12~~ *more than 9* members appointed by the governor from Montana's private sector travel industry and includes at least one member from Indian tribal governments and one tribal member from the private sector, with representation from each tourism region initially established by executive order of the governor and as may be modified by the council under subsection (5).

(3) Members of the council shall serve staggered 3-year terms, subject to replacement at the discretion of the governor.

(4) The council shall:

(a) oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion, nonprofit convention and visitors bureaus, and the state-tribal economic development commission established in 90-1-131 on behalf of an Indian tourism region in accordance with Title 15, chapter 65, part 1, and this section;

(b) advise the department of commerce relative to tourism promotion;

(c) advise the governor on significant matters relative to Montana's travel industry;

(d) prescribe allowable administrative expenses for which accommodation tax proceeds may be used by regional nonprofit tourism corporations and nonprofit convention and visitors bureaus;

(e) direct the university system regarding Montana travel research;

(f) approve all travel research programs prior to their being undertaken;

(g) encourage the state-tribal economic development commission and regional nonprofit tourism corporations to promote tourist activities on Indian reservations in their regions;

(h) encourage regional nonprofit tourism corporations and nonprofit convention and visitors bureaus receiving money under subsection (4)(a) to promote public and nonprofit history museums in their regions; and

(i) urge the department of transportation to include museums recognized by the museums association of Montana when it updates and publishes the state maps.

(5) The council may modify the tourism regions established by executive order of the governor.

(6) The department of commerce shall adopt rules to implement and administer Title 15, chapter 65, part 1, and this section."

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

Approved April 18, 2023

# CHAPTER NO. 93

[HB 144]

AN ACT REVISING ALCOHOL LICENSE LAWS RELATING TO THE COMPETITIVE BIDDING PROCESS; ALLOWING THE DEPARTMENT OF REVENUE TO PUBLISH THE AVAILABILITY OF MORE THAN ONE LICENSE UNTIL THE QUOTA HAS BEEN REACHED; PROVIDING THAT THE DEPARTMENT IS TO PROVIDE SEPARATE COMPETITIVE BIDDING PROCESSES IN THE SAME QUOTA AREA WHEN MORE THAN ONE NEW ALL-BEVERAGES LICENSE BECOMES AVAILABLE;

APPLYING TO BEER AND WINE, ALL-BEVERAGES, AND RESTAURANT BEER AND WINE LICENSES; REVISING CERTAIN FEES; ELIMINATING THE REQUIREMENT FOR A SUCCESSFUL BIDDER TO SUBMIT AN IRREVOCABLE LETTER OF CREDIT IN THE COMPETITIVE BIDDING PROCESS; AMENDING SECTIONS 16-4-105, 16-4-201, 16-4-412, 16-4-420, AND 16-4-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-4-105, MCA, is amended to read:

"**16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:

(a) The number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(f) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) ~~(a)~~ For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

~~(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.~~

~~(c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.~~

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)~~(b)~~, the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) ~~Except as provided in subsection (2)(b), when~~ *When* more than one new beer license ~~becomes available at the same time in the same quota area~~ *is subject to the competitive bidding process in the same quota area*, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(b) A person licensed under this subsection (6) may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

(8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a ~~$25,000~~ new license fee *equal to the annual fee as provided in 16-4-501* and in subsequent years pay the annual fee for the license as provided in 16-4-501.

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

**Section 2.** Section 16-4-201, MCA, is amended to read:

"**16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(a) the county boundary within which the incorporated city or incorporated town is located; or

(b) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(b) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(i) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(iii) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (3) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(5) ~~(a)~~ If any new retail all-beverages licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (3), the department shall ~~publish the availability of no more than one new retail all-beverages license a year until the quota has been reached. The department shall~~ use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

~~(b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4), the department may publish the availability of more than one new license a year until the quota has been reached.~~

(6) ~~Except as provided in subsection (5)(a), when~~ *When* more than one new all-beverages license ~~becomes available at the same time in the same quota area~~ *is subject to the competitive bidding process in the same quota area*, the department shall conduct a separate competitive bidding process at separate times for each available license.

(7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not be issued in violation of the limitations.

(8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, as to ownership only, retail license to:

(a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985;

(b) any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949; or

(c) a continuing care retirement community as provided in 16-4-315.

(9) The number of retail all-beverages licenses that the department may issue for use at premises situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one license for each 750 in population of the county after excluding the population of incorporated cities and incorporated towns in the county.

(10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of annexation.

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

(12) A person licensed under this section may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

**Section 3.** Section 16-4-412, MCA, is amended to read:

"**16-4-412. Limits on concurrent applications.** ~~(1)~~ An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

~~(a)~~*(1)* has not been made by the department; or

~~(b)~~*(2)* has been made by the department but:

~~(i)~~*(a)* a petition for judicial review can still be filed or has been filed; or

~~(ii)~~*(b)* an appeal to the Montana supreme court can still be filed or has been filed.

~~(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.~~"

**Section 4.** Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the

applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) and (3)(b). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license; and

(b) (i) the applicant's premises are suitable for the carrying on of the business;

(ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for carrying on with the business in accordance with 16-4-417; or

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

(7) (a) A restaurant beer and wine license not issued through a competitive bidding process as provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal

to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(A) the county boundary within which the incorporated city or incorporated town is located; or

(B) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license

existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(9) ~~(a)~~ For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

~~(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.~~

~~(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection (9)(a), the department may publish the availability of more than one new license a year until the quota has been reached.~~

(10) ~~Except as provided in subsection (9)(b), when~~ *When* more than one new restaurant beer and wine license ~~becomes available at the same time in the same quota area~~ *is subject to the competitive bidding process in the same quota area*, the department shall conduct a separate competitive bidding process at separate times for each available license.

(11) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available.

(12) When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

(13) (a) Except as provided in subsection (13)(b), beer and wine may be sold for off-premises consumption, including curbside pickup, ~~during~~ *between* the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

(b) A restaurant beer and wine licensee may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(14) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of

the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or fewer;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(15) The annual fee for a restaurant beer and wine license is $400.

(16) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(18) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

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

**Section 5.** Section 16-4-430, MCA, is amended to read:

"**16-4-430. Competitive bidding process -- all-beverages, retail beer and wine, and restaurant beer and wine licenses.** (1) (a) When the department determines that a quota area is eligible for a license under 16-4-105, 16-4-201, 16-4-204, or 16-4-420, the department shall use a competitive bidding process to determine the party afforded the opportunity to apply for the license. The department shall use a competitive bidding process when:

(i) a new license becomes available in a quota area where a license of the same type is not currently available in the quota area;

(ii) the opportunity to transfer a license into a quota area becomes available where a license of the same type is not currently available in the quota area;

(iii) the lapse, revocation, or issuance of a license within the quota area where the license is located has created the last remaining license for that license type in the quota area; or

(iv) the department's denial of an application for licensure or an applicant's withdrawal of an application for licensure has created the last remaining license for that license type in a quota area.

(b) The department shall:

(i) determine the minimum bid based on 75% of the market value of applicable licenses in the quota area;

(ii) publish notice that a quota area is eligible for a new license;

(iii) notify the bidder with the highest bid; and

(iv) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.

(2) (a) To enter the competitive bidding process, a bidder shall submit:

~~(i)~~ an electronic bid form provided by the department~~; and~~

~~(ii) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the bid amount. The financial institution may issue the irrevocable letter of credit in the name of the bidder,~~

~~if the bidder is a business entity, or in the name of an individual who is an owner of the business entity~~.

(b) The department shall contact any bidder whose timely submitted bid form has a deficiency and shall provide that bidder with an opportunity to resubmit the bid form within 5 business days to correct any deficiency.

(3) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be the tied bid amount. To submit a new bid, a tied bidder shall submit~~:~~

~~(a)~~ an electronic bid form provided by the department~~; and~~

~~(b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the new bid amount. The financial institution may issue the irrevocable letter of credit in the name of the bidder, if the bidder is a business entity, or in the name of an individual who is an owner of the business entity~~.

(4) The highest bidder shall:

(a) submit an application provided by the department and applicable fees for the license within 60 days of the department's notification of being the highest bidder;

(b) pay the bid amount prior to approval of the license;

(c) meet all other requirements to own the license; and

(d) commence business within 1 year of the department's notification, unless the department grants an extension because commencement was delayed by circumstances beyond the applicant's control. Any extension request must be made in writing to the department prior to the deadline for commencing business.

(5) If the highest bidder is not approved to own the license, the department shall offer the license to the next highest bidder. That bidder shall comply with the requirements of subsection (4). If no qualified bidder is approved to own the license, the department shall reopen the competitive bidding process for the license.

(6) (a) If no bids are received during the competitive bidding process, the department shall reopen the bid at a lower bid amount than initially determined in subsection (1).

(b) If, after holding a competitive bidding process, the department determines that there is no significant market value for a particular license, the department may withdraw that license from the competitive bidding process and process applications for the license in the order received.

(c) If a quota area is already eligible for a license as of November 24, 2017, the department shall process applications for the license in the order received.

(7) (a) The successful applicant is subject to forfeiture of the license, the license fees, and the original bid amount if the successful applicant:

(i) ~~transfers~~ *applies to transfer* the awarded license to another person or business entity within 1 year after receiving the license unless that transfer is due to a death of an owner;

(ii) proposes a location for the license within the first year of operation that had the same license type within the previous 12 months; or

(iii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the successful applicant provides evidence that the delay in use is for reasons outside the applicant's control. Evidence of the delay must be made in writing to the department prior to the deadline for commencing business.

(b) If a license is forfeited, the department shall determine whether there is a lien against the license. If there is a lien, the department shall notify the lienholder or secured party of the forfeiture and the lienholder or secured

party may foreclose on the license and request transfer of the license pursuant to 16-4-801. If there is not a lien on the license or if the lienholder or secured party does not foreclose on the license pursuant to 16-4-801, the department shall conduct another competitive bidding process for the license.

(8) A license issued under this section is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(9) Nothing in subsection (7) relating to forfeiture prohibits a lienholder or secured party from foreclosing on a license. A lien may be placed on a license issued under this section and may be foreclosed on. If a license is foreclosed on, the department shall keep the license fees and the original bid amount and the lienholder or secured party may resell the license, pending department approval of the applicant."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 94

[HB 146]

AN ACT AUTHORIZING LANDOWNER PREFERENCE HUNTING LICENSES AND PERMITS FOR DEER AND ANTELOPE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Landowner preference licenses and permits for deer and antelope.** (1) Subject to the provisions of subsection (2) and the limitation in subsection (3), a person who owns 160 acres or more of real property that is primarily used for agricultural purposes in a hunting district in which a limited number of deer or antelope licenses or permits are awarded must be issued, on application, a license or permit to hunt deer or antelope in the hunting district under the terms and conditions of the license or permit.

(2) When the real property is held jointly or in common by several persons, only one of the joint or common owners is entitled to the preference provided in this section, or the owners may designate their preference to a person who is an immediate family member or who is employed by the owner or owners as a land manager or in a similar capacity. Preference may not be awarded to a landowner if the hunting area is totally within the prescribed boundaries of public land.

(3) Fifteen percent of limited licenses or permits available each year in a hunting district for deer or antelope must be available to landowners under this section. If the number of persons applying pursuant to this section exceeds 15% of licenses and permits available for that hunting district, the department shall award the licenses and permits by drawing. The department shall provide a method of selecting first, second, and third choice hunting districts if a drawing is required.

**Section 2. 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 3. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 95

[HB 148]

AN ACT REVISING INFORMATION TECHNOLOGY BOARD MEMBERSHIP TO MAKE THE CHIEF INFORMATION OFFICER THE PRESIDING OFFICER OF THE BOARD AND ALLOW CERTAIN MEMBERS' DESIGNEES TO SERVE; AND AMENDING SECTION 2-15-1021, MCA.

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

**Section 1.** Section 2-15-1021, MCA, is amended to read:

"**2-15-1021. Information technology board -- membership -- qualifications -- vacancies -- compensation.** (1) There is an information technology board. The board consists of 18 members who are appointed as follows:

(a) the ~~director of the department of administration~~ *chief information officer provided for in 2-17-511 or a designee*, who serves as presiding officer of the board;

(b) the ~~chief information officer provided for in 2-17-511~~ *director of the department of administration or a designee*;

(c) the director of the office of budget and program planning *or a designee*;

(d) three members who are directors of state agencies and who are appointed by the governor*, or their designees*;

(e) two members representing local government, appointed by the governor;

(f) one member representing the public service commission, appointed by the public service commission;

(g) one member representing the private sector, appointed by the governor;

(h) one member of the house of representatives, appointed by the speaker of the house of representatives;

(i) one member of the senate, appointed by the president of the senate;

(j) one member representing the legislative branch, appointed by the legislative branch information technology planning council;

(k) one member representing the judicial branch, appointed by the chief justice of the supreme court;

(l) one member representing K-12 education, appointed by the superintendent of public instruction;

(m) the attorney general or a designee;

(n) the secretary of state or a designee; and

(o) the state auditor or a designee.

(2) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the information technology resources used by the state.

(3) A vacancy occurring on the board must be filled by the appointing authority in the same manner as the original appointment.

(4) The board shall function in an advisory capacity as defined in 2-15-102.

(5) Members of the board must be reimbursed and compensated in the same manner as members of quasi-judicial boards under 2-15-124(7), except that legislative members are reimbursed and compensated as provided in 5-2-302."

Approved April 18, 2023

# CHAPTER NO. 96

[HB 151]

AN ACT GENERALLY REVISING STATE BUILDING CONSTRUCTION PROCUREMENT LAWS; RAISING THE COST THRESHOLD OF CONSTRUCTION ACTIVITIES THAT REQUIRE LEGISLATIVE APPROVAL; RAISING CERTAIN COST THRESHOLDS FOR SUPERVISION REQUIREMENTS OF BUILDING CONSTRUCTION; PROVIDING FOR INFLATIONARY ADJUSTMENT OF CERTAIN COST THRESHOLDS THROUGH RULEMAKING; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO NEGOTIATE A CONTRACT WITHOUT COMPETITIVE BIDDING IF AN EMERGENCY OR PUBLIC EXIGENCY EXISTS AND TO NEGOTIATE DEDUCTIVE CHANGES OF A GREATER PERCENTAGE OF THE TOTAL COST OF THE PROJECT WHEN BIDS RECEIVED EXCEED THE APPROPRIATION; RAISING THE COST THRESHOLD UNDER WHICH THE DEPARTMENT OF ADMINISTRATION MAY PREPARE WORKING DRAWINGS FOR BUILDING CONSTRUCTION; RAISING THE COST THRESHOLD FOR WAIVING CERTAIN SECURITY REQUIREMENTS; ALLOWING FOR PUBLIC NOTICE THROUGH ELECTRONIC MEANS FOR COMPETITIVE BIDDING ON CERTAIN PROJECTS; ALLOWING BUILDING CONSTRUCTION BIDS TO BE SECURED BY AN IRREVOCABLE LETTER OF CREDIT; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-111, 18-2-201, 18-2-301, 18-2-302, AND 18-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 18-2-102, MCA, is amended to read:

"**18-2-102. Authority to construct buildings -- *reporting requirement.*** (1) Except as provided in 22-3-1003 and subsection (2) of this section, ~~a building costing more than $150,000 may not be constructed without~~ *construction activities costing more than $300,000 require* the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than ~~$150,000~~ *$300,000* is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309.

(e) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

*(f) Each year by August 1, the department of administration shall report, in accordance with 5-11-210, to the long-range planning budget committee provided for in 5-12-501 on all buildings constructed without legislative approval that cost between $150,000 and $300,000 during the previous fiscal year.*"

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

"**18-2-103. Supervision of construction of buildings.** (1) For ~~the~~ construction ~~of a building~~ *activities* costing more than ~~$150,000~~ *$300,000*, the department shall:

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

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

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

(d) review and approve all change orders; and

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

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

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

(4) *(a)* The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are ~~$75,000~~ *$150,000* or less. However, with respect to a project having a proposed cost of ~~$75,000~~ *$150,000* or less but more than ~~$25,000~~ *$50,000*, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

*(b) Starting on July 1, 2028, and every 5 years after that, the department shall adjust the limits in subsection (4)(a) for inflation. The inflation adjustment is found by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2023. The newly adjusted limits must be rounded to the nearest $1,000 and adopted by rule.*

*(5) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:*

*(a) an emergency as defined in 10-3-103 exists; or*

*(b) a public exigency as defined in 2-17-101 exists.*

~~(5)~~*(6)* For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. ~~"Construction"~~ *The term "construction"* includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.

~~(6)~~*(7)* It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

~~(7)~~*(8)* The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(e). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract."

**Section 3.** Section 18-2-105, MCA, is amended to read:

"**18-2-105. General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

(4) subject to 2-17-135, purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed ~~7%~~ *15%* of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time."

**Section 4.** Section 18-2-111, MCA, is amended to read:

"**18-2-111. Policy regarding practice of architecture *or engineering* -- preparation of working drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture *or engineering*. However, this policy may not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(7); or

(c) preparing working drawings for minor projects.

(2) The department of administration may not prepare working drawings for ~~the construction of a building~~ *construction activities*, with the exception of repair or maintenance projects, when the total cost of the construction will exceed ~~$75,000~~ *$150,000*.

*(3) This policy may not be construed to grant the department an exception from the licensing requirements of Title 67, chapter 65 or 67, or the seal requirements provided in 18-2-114 and 18-2-122.*"

**Section 5.** Section 18-2-201, MCA, is amended to read:

"**18-2-201. Security requirements.** (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or

corporation with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

(i) faithfully perform all ~~of the~~ provisions of the contract;

(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

(iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than ~~$50,000~~ *$150,000*.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

**Section 6.** Section 18-2-301, MCA, is amended to read:

"**18-2-301. Bids required -- ~~advertising~~ *public notice*.** (1) *(a)* ~~It is unlawful for any offices~~ *Offices*, departments, *or* institutions, or any agent of the state of Montana acting for or ~~in~~ *on* behalf of the state*,* ~~to~~ *may not* do, ~~to~~ cause to be done, or ~~to~~ let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~$75,000~~ *$150,000* or more without first ~~advertising in at least one issue each week~~ *providing public notice* for 3 consecutive weeks ~~in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed,~~*,* calling for sealed bids to perform the work and stating the time and place bids will be considered. *Notice may include electronic notification, publication in newspapers of general circulation, or other appropriate means.*

*(b) Starting July 1, 2028, and every 5 years after that, the department shall adjust the limits in subsection (1)(a) for inflation. The inflation adjustment is determined by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2023. The newly adjusted limits must be rounded to the nearest $1,000 and adopted by rule.*

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections.

(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:

(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.

(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:

(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;

(ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b)."

**Section 7.** Section 18-2-302, MCA, is amended to read:

"**18-2-302. Bid security -- waiver -- authority to submit.** (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, *an irrevocable letter of credit,* or a bank draft. The security must be:

(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than ~~$25,000~~ *$150,000*.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

**Section 8.** Section 18-2-501, MCA, is amended to read:

"**18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(b) The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).

(2) "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) "Contractor" has the meaning provided in 18-4-123.

(4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) "Governing body" means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23;

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401; or

(d) the transportation commission established in 2-15-2502.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, ~~18-2-301,~~ and 20-9-204 *or the provision of public notice pursuant to 18-2-301*.

(9) "State agency" has the meaning provided in 2-2-102. This definition does not include the department of transportation. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

**18-2-501. (Effective January 1, 2025) Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) "Contractor" has the meaning provided in 18-4-123.

(4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) "Governing body" means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, ~~18-2-301,~~ and 20-9-204 *or the provision of public notice pursuant to 18-2-301*.

(9) "State agency" has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency."

**Section 9. Coordination instruction.** If House Bill No. 110 is not passed and approved, then the reference to the long-range planning budget committee in [section 1(2)(f) of this act], amending 18-2-102, must be changed to refer to the legislative finance committee.

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 97

[HB 155]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING DEFINITIONS; REVISING LICENSURE LAWS; REVISING LAWS RELATING TO CERTAIN OWNERSHIP INTEREST LICENSE TRANSFERS;

AND AMENDING SECTIONS 16-4-101, 16-4-103, 16-4-104, 16-4-115, 16-4-208, 16-4-305, 16-4-306, AND 16-4-415, MCA.

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

**Section 1.** Section 16-4-101, MCA, is amended to read:

"**16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant.** (1) Any person desiring to manufacture, *distribute,* import, or sell beer under the provisions of this code shall first apply to the department for a license to do so and pay with ~~such~~ *the* application the license fee prescribed. The department shall require of ~~such~~ *the* applicant satisfactory evidence that the applicant is ~~of good moral character and a law-abiding person~~ *suitable for carrying on the operations of a license*.

(2) ~~Upon~~ *On* being satisfied, from ~~such~~ *the* application or otherwise, that ~~such~~ *the* applicant is qualified, the department shall issue ~~such~~ *a* license to ~~such~~ *the* person, ~~which~~ *and the* license ~~shall be~~ *must* at all times *be* prominently displayed ~~in the place of business of such applicant~~ *at the licensed premises*.

(3) If the department ~~shall find~~ *finds* that ~~such~~ *the* applicant is not qualified, ~~no~~ *a* license ~~shall~~ *may not* be granted and ~~such~~ *the* license fee ~~shall~~ *must* be returned."

**Section 2.** Section 16-4-103, MCA, is amended to read:

"**16-4-103. Wholesalers' licenses -- application and issuance -- subwarehouses -- imported beer handled through warehouse or subwarehouse -- wine storage.** (1) Any person desiring to sell and distribute beer as a wholesaler shall apply to the department for a license and tender with the application the required license fee. The department shall issue wholesale licenses to qualified applicants in accordance with the provisions of this code. A license must be prominently displayed at all times ~~in the place of business~~ *at the licensed premises* of the wholesaler.

(2) An applicant shall maintain a fixed place of business, sufficient capital, and the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which must be issued for the wholesaler's ~~principal place of business~~ *licensed premises* in Montana. Duplicate licenses may be issued for the wholesaler's subwarehouses in Montana. ~~The duplicate licenses~~ *These licenses* must be prominently displayed at all times at the subwarehouses.

(3) ~~If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.~~

~~(4)~~ A wholesaler that is also licensed as a table wine distributor may store wine in any of the wholesaler's warehouses or subwarehouses.

~~(5)~~*(4)* As used in subsection (1), "distribute" ~~has the meaning provided in 16-3-218~~ *means to deliver beer to a retailer's premises that is licensed to sell beer as well as an alternate alcoholic beverage storage facility as allowed in 16-4-213(8)*."

**Section 3.** Section 16-4-104, MCA, is amended to read:

"**16-4-104. Beer retailer's license -- application and issuance -- check of alcoholic content by department.** (1) Any person desiring to possess and have beer for the purpose of retail sale under the provisions of this code shall first apply to the department for a ~~permit~~ *license* to do so and submit with the application the license fee.

(2) ~~Upon~~ *On* being satisfied, from the application or otherwise, that the applicant is qualified, the department shall issue a license to the person. The

license must at all times be prominently displayed ~~in the place of business of the person~~ *at the licensed premises*.

(3) If the department finds that the applicant is not qualified, a license may not be granted and the license fee must be returned by the department.

(4) The department may, at any time, examine the books of account and the premises of any licensed retailer and otherwise check the retailer's methods of conducting business and the alcoholic content of the beer kept for sale.

(5) A person may not sell beer at retail without a valid license issued under this code."

**Section 4.** Section 16-4-115, MCA, is amended to read:

"**16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to ~~a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or table wine, or both~~ *individuals or entities qualified for licensure under 16-4-401*. If the premises proposed for licensing are operated in conjunction with another business, that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause.

(2) ~~Upon~~ *On* receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a background investigation of all matters relating to the application.

(3) Based on the results of the investigation or in exercising its sound discretion as provided in subsection (1), the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

(4) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

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

**Section 5.** Section 16-4-208, MCA, is amended to read:

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

(a) application is made;

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

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

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

(3) A public airport all-beverages license and all retail alcoholic beverage sales under it are subject to all statutes and rules governing all-beverages licenses.

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

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

**Section 6.** Section 16-4-305, MCA, is amended to read:

"**16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota.** (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail ~~liquor~~ *alcoholic beverage* licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(6) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail ~~liquor~~ *alcoholic beverage* licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

**Section 7.** Section 16-4-306, MCA, is amended to read:

"**16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.** (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, ~~upon~~ *on* approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.

(2) A license that is transferred to a political subdivision of the state:

(a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;

(b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;

(c) may be authorized only for a fairgrounds complex owned by the political subdivision;

(d) is authorized for use in all facilities contained in the fairgrounds complex;

(e) ~~is not, with respect to the facilities, subject to the provisions of 16-4-204(5);~~

~~(f)~~ must be taken into account in determining the license quota restrictions of 16-4-105; and

~~(g)~~*(f)* is subject to all license fees, laws, and rules applicable to retail beer or beer and wine licenses.

(3) The department may adopt rules to implement the provisions of this section."

**Section 8.** Section 16-4-415, MCA, is amended to read:

"**16-4-415. Changes in business entity ownership -- department approval required.** (1) In the case of corporate licensees, a person or entity that does not own stock or owns less than 15% of the stock in the corporation may not receive stock that results in the person or entity's share of stock in the corporation being 15% or greater, unless the department reviews and determines that the person or entity qualifies for ownership of a license as provided in 16-4-401.

(2) In the case of all other business entities, when a proposed transfer of ownership would result in a party who prior to the transfer owned no interest in the license owning 15% or more interest in the license, the proposed transfer must be submitted to the department for review. The proposed new party must qualify for ownership of ~~a liquor~~ *an alcoholic beverage* license as provided in 16-4-401.

*(3) An ownership interest in an alcoholic beverage license may be transferred to an existing owner with 15% or more ownership in the license without department approval, subject to reporting requirements at the time of renewal.*

~~(3)~~*(4)* In the case of a proposed change in business entity, the proposed new business entity shall apply for a transfer of ownership of the license with the department prior to changing the business entity. The proposed new business entity must qualify for ownership of ~~a liquor~~ *an alcoholic beverage* license as provided in 16-4-401. If the existing owners and ownership percentages do not change under the proposed change in business entity, the new entity shall notify the department of the new business entity type, but prior department approval is not required."

**Section 9. Coordination instruction.** If House Bill No. 127 is passed and approved and if it repeals 16-4-103, then [section 2 of this act], amending 16-4-103, is void.

Approved April 18, 2023

# CHAPTER NO. 98

[HB 158]

AN ACT REVISING LAWS RELATED TO CUSTOM EXEMPT FACILITIES; UPDATING REGULATORY OVERSIGHT OF CUSTOM EXEMPT FACILITIES TO MATCH FEDERAL REQUIREMENTS; AND AMENDING SECTION 81-9-218, MCA.

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

**Section 1.** Section 81-9-218, MCA, is amended to read:

"**81-9-218. Exemptions.** (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for the person's own personal or household use;

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food; and

(c) a producer as defined in 50-49-202 who sells homemade food or slaughters fewer than 1,000 poultry birds a year pursuant to 50-49-303 except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175.

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of the livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of the owner's household or the owner's nonpaying guests or employees is exempt from 81-9-216, ~~through 81-9-220~~ *81-9-217, 81-9-220,* and 81-9-226 through 81-9-236 if the carcasses, parts, or meat food products or containers of the articles are:

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility."

Approved April 18, 2023

# CHAPTER NO. 99

[HB 159]

AN ACT REVISING LAWS RELATED TO THE LIVESTOCK CRIMESTOPPERS ACT; REPEALING THE LIVESTOCK CRIMESTOPPERS COMMISSION; REMANDING THE LIVESTOCK CRIMESTOPPERS COMMISSION DUTIES TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 81-6-302 AND 81-6-313, MCA; AND REPEALING SECTIONS 2-15-3104, 81-6-311, AND 81-6-312, MCA.

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

**Section 1.** Section 81-6-302, MCA, is amended to read:

"**81-6-302. Definitions.** As used in this part, the following definitions apply:

~~(1) "Commission" means the livestock crimestoppers commission created in 2-15-3104.~~

~~(2)~~*(1)* "Department" means the department of livestock created in Title 2, chapter 15, part 31.

~~(3)~~*(2)* "Livestock" includes ostriches, rheas, and emus in addition to other livestock.

~~(4)~~*(3)* "Program" means the livestock crimestoppers program created under 81-6-313."

**Section 2.** Section 81-6-313, MCA, is amended to read:

"**81-6-313. Powers and duties of department -- rules.** (1) The department ~~shall~~ *may*:

(a) create, maintain, and promote a statewide livestock crimestoppers program in order to assist law enforcement agencies in detecting and combating livestock-related crimes; ~~and~~

~~(b) consider the commission's recommendations and take action on them.~~

~~(2) The department may:~~

~~(a)~~*(b)* advise and assist in the creation and maintenance of local programs;

~~(b)~~*(c)* encourage the channeling of information from the programs to law enforcement agencies;

~~(c)~~*(d)* foster the detection of livestock-related crimes by the public;

~~(d)~~*(e)* encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of livestock-related crimes;

~~(e)~~*(f)* promote the state and local programs through the media;

~~(f)~~*(g)* accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

~~(g)~~*(h)* adopt rules necessary to administer the provisions of this part.

*(2) The department shall recommend to the board of livestock:*

*(a) the names of individuals to be rewarded for providing information used in detecting and combating livestock-related crimes;*

*(b) the amount of any reward recommended; and*

*(c) means for promoting the program.*"

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-3104. Livestock crimestoppers commission.
81-6-311. Functions of commission.
81-6-312. Compensation.

Approved April 18, 2023

# CHAPTER NO. 100

[HB 199]

AN ACT GENERALLY REVISING LAWS RELATED TO THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT; RENAMING THE CHIEF BUSINESS DEVELOPMENT OFFICER TO CHIEF ECONOMIC DEVELOPMENT OFFICER; REVISING THE DUTIES OF THE CHIEF ECONOMIC DEVELOPMENT OFFICER; AND AMENDING SECTIONS 2-15-218, 2-15-219, AND 2-18-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-218, MCA, is amended to read:

"**2-15-218. Office of economic development -- structure.** (1) There is an office of economic development within the office of the governor.

(2) The head of the office is the chief ~~business~~ *economic* development officer, who must be appointed by the governor.

(3) The office of economic development is composed of the following policy and program specialties:

(a) business retention and recruitment;

(b) workforce development;

(c) technology development;

(d) infrastructure improvement; and

(e) permitting and regulatory processes.

(4) The office may employ or contract with policy specialists to implement the programs listed in subsection (3) and the functions referred to in 2-15-219.

(5) The office may accept grants, loans, and other gifts from sources other than the state for the purpose of administering the provisions of 2-15-219, 90-1-112 through 90-1-114, and this section."

**Section 2.** Section 2-15-219, MCA, is amended to read:

"**2-15-219. Chief ~~business~~ *economic* development officer -- duties.** The chief ~~business~~ *economic* development officer shall:

(1) advise the governor on policy issues related to economic development;

(2) ~~lead~~ *coordinate* the state's business recruitment, retention, and expansion efforts;

(3) coordinate the development and distribution of a statewide coordinated strategic economic development plan;

(4) coordinate the individual functions and programs within the office as provided in 2-15-218; and

(5) serve as the state's primary liaison between federal, state, and local agencies, Montana tribal governments, private, nonprofit economic development organizations, and the private sector."

**Section 3.** 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 eight professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) director of the Montana state lottery and 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~~ *economic* development officer and six professional staff positions in the office of economic development provided for in 2-15-218; and

(21) the director of the office of state public defender provided for in 2-15-1029."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 101

[HB 232]

AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO LEASES FOR THE PURPOSE OF CONSOLIDATION AND COST SAVINGS WITHOUT REQUIRING LONG-RANGE BUILDING APPROVAL; AMENDING SECTION 2-17-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-17-101, MCA, is amended to read:

"**2-17-101. (Temporary) Allocation of space -- leasing -- definition.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department shall identify the amount, location, and nature of space used by each agency, including summary information on average cost per square foot for each municipality, and report this to the office of budget and program planning and to the legislative fiscal analyst by September 1 of each even-numbered year. The report must be provided in an electronic format. The department of administration shall provide a copy of the report to the legislature in accordance with 5-11-210.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state, including buildings in Helena and in other areas, to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate existing building or a build-to-lease building, including buildings in Helena and in other areas, or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase real property without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers for the senate must be determined in the sole discretion of the senate.

(b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) The department shall consolidate the offices of state agencies in a single, central location within a municipality whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in a municipality to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation.

(5) ~~Any~~ *Except for any lease entered into by the department for the purposes of subsection (4), any* lease for more than 45,000 square feet or for a term of more than 20 years must be submitted as part of the long-range building program and approved by the legislature before the department of administration may proceed with the lease. Multiple leases in the same building entered into within any 60-day period are to be aggregated for purposes of this threshold calculation. When immediate relocation of agency employees is required due to a public exigency, the requirements of this subsection do not apply, but the new lease must be reported as required by subsection (1).

(6) The department shall include language in every lease providing that if funds are not appropriated or otherwise made available to support continued performance of the lease in subsequent fiscal periods, the lease must be canceled.

(7) "Public exigency" means that due to unforeseen circumstances a facility occupied by state employees is uninhabitable due to immediate conditions that adversely impact the health or safety of the occupants of the facility. (Terminates June 30, 2023--sec. 3, Ch. 401, L. 2019.)

**2-17-101. (Effective July 1, 2023) Allocation of space -- leasing -- definition.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department shall identify the amount, location, and nature of space used by each agency, including summary information on average cost per square foot for each municipality, and report this to the office of budget and program planning and to the legislative fiscal analyst by September 1 of each even-numbered year. The report must be provided in an electronic format. The department of administration shall provide a copy of the report to the legislature in accordance with 5-11-210.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state, including buildings in Helena and in other areas, to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate existing building or a build-to-lease building, including buildings in Helena and in other areas, or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase real property without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers for the senate must be determined in the sole discretion of the senate.

(b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) The department shall consolidate the offices of state agencies in a single, central location within a municipality whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in a municipality to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation.

(5) ~~Any~~ *Except for any lease entered into by the department for the purposes of subsection (4), any* lease for more than 40,000 square feet or for a term of more than 20 years must be submitted as part of the long-range building program and approved by the legislature before the department of administration may proceed with the lease. Multiple leases in the same building entered into within any 60-day period are to be aggregated for purposes of this threshold calculation. When immediate relocation of agency employees is required due to a public exigency, the requirements of this subsection do not apply, but the new lease must be reported as required by subsection (1).

(6) The department shall include language in every lease providing that if funds are not appropriated or otherwise made available to support continued performance of the lease in subsequent fiscal periods, the lease must be cancelled.

(7) "Public exigency" means that due to unforeseen circumstances a facility occupied by state employees is uninhabitable due to immediate conditions that adversely impact the health or safety of the occupants of the facility."

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

Approved April 18, 2023

# CHAPTER NO. 102

[HB 240]

AN ACT REVISING AN OUTDATED REFERENCE IN THE FAMILY EDUCATION SAVINGS ACT; AMENDING SECTION 15-62-208, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 15-62-208, MCA, is amended to read:

"**15-62-208. (Temporary) Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-2110(11).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529 of the Internal Revenue Code of 1986, 26 U.S.C. 529. The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 1 year prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.

**15-62-208. (Effective January 1, 2024) Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at a rate equal to

the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that were deducted from income in calculating Montana individual income taxes.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced Montana individual income taxes, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529 of the Internal Revenue Code of 1986, 26 U.S.C. 529. The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce Montana individual income taxes, to the extent of those contributions, and then to contributions that reduced Montana individual income taxes. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced Montana individual income taxes, to the extent of the contributions, and then to contributions that did not reduce Montana individual income taxes.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's Montana individual income taxes unless the contributor can demonstrate that all or a portion of the contributions did not reduce Montana individual income taxes.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after ~~the later of:~~

~~(a) April 30, 2001; or~~

~~(b)~~ the date that is 1 year prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

**Section 2. Effective date.** [This act] is effective January 1, 2024.

Approved April 18, 2023

# CHAPTER NO. 103

[HB 254]

AN ACT REVISING ALCOHOL LAWS TO CLARIFY THAT CURBSIDE PICKUP CONSTITUTES ORDERS THAT ARE MADE IN PERSON, INCLUDING THROUGH A DRIVE-THROUGH WINDOW; AMENDING SECTION 16-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

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

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

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

Approved April 18, 2023

# CHAPTER NO. 104

[HB 266]

AN ACT ELIMINATING THE ADVISORY COUNCIL ON CONCEALED WEAPON PERMIT ISSUES; AMENDING SECTION 45-8-329, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 45-8-329, MCA, is amended to read:

"**45-8-329. Concealed weapon permits from other states recognized ~~-- advisory council~~.** (1) A concealed weapon permit from another state is valid in this state if:

(a) the person issued the permit has the permit in the person's immediate possession;

(b) the person bearing the permit is also in possession of an official photo identification of the person, whether on the permit or on other identification; and

(c) the state that issued the permit requires a criminal records background check of permit applicants prior to issuance of a permit.

(2) The attorney general shall develop and maintain a list of states from which permits are recognized under this section for the use by law enforcement agencies in this state.

(3) A determination or declaration of a Montana government entity, official, or employee is not necessary to the existence and exercise of the privilege granted by this section.

~~(4) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue concealed weapon permit issues.~~"

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

Approved April 18, 2023

# CHAPTER NO. 105

[HB 273]

AN ACT REVISING LAWS RELATING TO THE DIRECTOR OF THE STATE LOTTERY; REMOVING THE RESTRICTION THAT THE DIRECTOR MAY NOT HOLD ANY OTHER OCCUPATION; PROVIDING THAT THE DIRECTOR MAY NOT OWN OR BE EMPLOYED BY A GAMING SUPPLIER OR SALES AGENT; AMENDING SECTION 23-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 23-7-210, MCA, is amended to read:

"**23-7-210. Director -- appointment -- qualifications.** (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery, including sports wagering. The director must be a full-time employee and may not ~~engage in any other occupation~~ *own or be employed by a gaming supplier or sales agent*."

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

Approved April 18, 2023

# CHAPTER NO. 106

[HB 281]

AN ACT EXTENDING THE TERMS OF BURIAL PRESERVATION BOARD MEMBERS FROM 2 TO 4 YEARS OF SERVICE; PROVIDING A TRANSITION SCHEDULE; AMENDING SECTION 22-3-804, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 22-3-804, MCA, is amended to read:

"**22-3-804. Board -- composition -- rights -- responsibilities.** (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the federally recognized Indian tribes in Montana, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(c) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological ~~association~~ *society*;

(d) one physical anthropologist appointed by the governor;

(e) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(f) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered ~~2-year~~ *4-year* terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial material;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

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

(5) Each member of the board is entitled to be paid $50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

**Section 2. Transition.** (1) On [the effective date of this act], the terms of all current board members terminate and the governor shall appoint or reappoint new board members. To create staggered 4-year terms:

(a) seven members must be appointed to 2-year terms; and

(b) six members must be appointed to 4-year terms.

(2) After the expiration of a term provided for in subsection (1), the governor shall appoint a person to serve a full 4-year term as provided in [section 1].

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 4. Effective date.** [This act] is effective September 1, 2023.

Approved April 18, 2023

# CHAPTER NO. 107

[HB 290]

AN ACT REVISING APPOINTMENTS TO THE WETLANDS PROTECTION ADVISORY COUNCIL; AND AMENDING SECTION 2-15-3405, MCA.

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

**Section 1.** Section 2-15-3405, MCA, is amended to read:

"**2-15-3405. Appointment of wetlands protection advisory council.** (1) The director of fish, wildlife, and parks shall appoint an advisory council pursuant to 2-15-122 to review proposals developed by the department of fish, wildlife, and parks that involve the use of money received by the department under 87-2-411 for the protection, conservation, and development of wetlands in Montana.

(2) ~~Members must be appointed to~~ *The director shall appoint seven members to* the advisory council who represent Montana migratory game bird hunters, nonconsumptive users of wildlife, and the agricultural industry*, including one member from each administrative region described in 2-15-3402.*

*(3) Members shall serve staggered, 6-year terms beginning October 1, 2023, and must be appointed so that no more than three appointments expire in any one year. To implement staggered terms, the director may specify a shorter length of term for initial members.*"

Approved April 18, 2023

# CHAPTER NO. 108

[HB 316]

AN ACT GENERALLY REVISING LAWS RELATED TO ADVISORY COUNCILS; ALLOWING ADVISORY COUNCILS TO MEET STATEWIDE AND BY REMOTE MEANS; AND AMENDING SECTION 2-15-122, MCA.

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

**Section 1.** Section 2-15-122, MCA, is amended to read:

"**2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section must be known as the ".... advisory council".

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the creating authority; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head,

not to exceed $50 for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. The maximum daily pay rate must be adjusted for inflation annually by multiplying the base income of $50 by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding the product to the nearest whole dollar amount.

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may ~~not meet outside the city of Helena without the express prior authorization of the creating authority~~ *meet anywhere within the state of Montana or by remote means*.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c), an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, the appointing authority shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

(11) For the purposes of this section, *the following definitions apply:*

*(a)* "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.

*(b) "Remote means" includes telephone audio, teleconference, or videoconference*."

Approved April 18, 2023

# CHAPTER NO. 109

[HB 320]

AN ACT REVISING REQUIREMENTS FOR MOTOR VEHICLE OPERATION WHEN APPROACHING UTILITY VEHICLES OR HIGHWAY MAINTENANCE VEHICLES DISPLAYING FLASHING LIGHTS; AND AMENDING SECTION 61-8-346, MCA.

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

**Section 1.** Section 61-8-346, MCA, is amended to read:

"**61-8-346. Operation of vehicles on approach of authorized emergency vehicles or law enforcement vehicles -- approaching stationary emergency vehicles or law enforcement vehicles -- reckless endangerment of emergency personnel.** (1) Upon the approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a law enforcement vehicle properly and lawfully making use of an audible signal only, the operator of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of an authorized emergency vehicle or law enforcement vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) On approaching and passing a stationary authorized emergency vehicle, law enforcement vehicle, ~~or~~ tow truck*, highway maintenance vehicle, or utility service vehicle* that is displaying visible signals of flashing or rotating amber, blue, red, or green lights or any temporary sign advising of an emergency scene or accident ahead, the operator of the approaching vehicle shall:

(a) cautiously and in a careful manner reduce the vehicle's speed to a reasonably lower and safe speed appropriate to the road and visual conditions or to the temporarily posted speed limit, but to a careful and prudent speed if a temporarily posted speed has not been posted;

(b) proceed with caution; and

(c) if possible considering safety and traffic conditions:

(i) move to a lane that is not adjacent to the lane in which the authorized emergency vehicle, law enforcement vehicle, ~~or~~ tow truck*, highway maintenance vehicle, or utility service vehicle* is located;

(ii) move as far away from the authorized emergency vehicle, law enforcement vehicle, ~~or~~ tow truck*, highway maintenance vehicle, or utility service vehicle* as possible; or

(iii) follow flagger instructions or instructions on sign boards.

(4) An operator of a vehicle who violates subsection (3) commits the offense of reckless endangerment of emergency personnel."

Approved April 18, 2023

# CHAPTER NO. 110

[HB 343]

AN ACT GENERALLY REVISING LAWS RELATED TO GEOSPATIAL AND NATURAL RESOURCE INFORMATION LAWS; REVISING THE MONTANA GEOSPATIAL INFORMATION ADVISORY COUNCIL MEMBERSHIP AND

TERMS; PROVIDING STANDARDS FOR GEOSPATIAL INFORMATION GRANTS; ELIMINATING REPORTING REQUIREMENTS; ELIMINATING THE NATURAL RESOURCE DATA SYSTEM ADVISORY COMMITTEE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1514, 7-4-2637, 90-1-401, 90-1-402, 90-1-403, 90-1-404, 90-1-405, 90-1-406, 90-1-409, 90-1-410, 90-1-411, 90-1-413, 90-15-102, 90-15-301, AND 90-15-303, MCA; REPEALING SECTIONS 90-15-201, 90-15-202, AND 90-15-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1514, MCA, is amended to read:

"**2-15-1514. State library commission ~~-- natural resource data system advisory committee~~.** (1) ~~(a)~~ There is a state library commission created in Title 22, chapter 1.

~~(b)~~*(2)* The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members are as prescribed by law.

~~(2) (a) There is a natural resource data system advisory committee consisting of an employee of the legislative services division, of the department of administration, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.~~

~~(b) The state library shall provide staff support to the committee, within the limits of the library's available resources.~~"

**Section 2.** Section 7-4-2637, MCA, is amended to read:

"**7-4-2637. Fees for recording documents.** (1) Except as provided in 7-2-2803(4) and 7-4-2631, the fee for recording a standard document that meets the requirements of 7-4-2636 is $8 for each page or fraction of a page.

(2) Except as provided in 7-2-2803(4), the fee for recording a document that does not meet the requirements of 7-4-2636 is the fee specified in subsection (1) plus $10.

(3) (a) Of the fees collected under subsection (1), for each page or fraction of a page:

(i) $1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 50 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) $1.50 must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana ~~land~~ *geospatial* information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) The fees collected under subsection (2) must be deposited in the records preservation fund provided for in 7-4-2635."

**Section 3.** Section 90-1-401, MCA, is amended to read:

"**90-1-401. Short title.** This part may be cited as the "Montana ~~Land~~ *Geospatial* Information Act"."

**Section 4.** Section 90-1-402, MCA, is amended to read:

"**90-1-402. Purpose.** The purpose of this part is to develop a standardized, sustainable method to collect, maintain, and disseminate information in digital formats about the natural and artificial land characteristics of Montana. ~~Land~~ *Geospatial* information changes continuously and is needed by businesses, citizens, governmental entities, and others in digital formats to be most effective and productive. This part will ensure that digital ~~land~~ *geospatial*

information is collected consistently, maintained accurately in accordance with standards, and made available in common ways for all potential uses and users, both private and public. ~~This~~ *Through planning and grant making, this* part prioritizes consistent collection, accurate maintenance, and common availability of ~~land~~ *geospatial* information to provide needed, standardized, and uniform ~~land~~ *geospatial* information in digital formats."

**Section 5.** Section 90-1-403, MCA, is amended to read:

"**90-1-403. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the Montana ~~land~~ *geospatial* information account created in 90-1-409.

(2) "Council" means the ~~land~~ *geospatial* information advisory council established in 90-1-405.

(3) "Digital format" means information that is scanned, electronically drawn, layered through the GIS, or digitized by other electronic methods.

(4) "Geographic information system" or "GIS" means an organized collection of computer hardware, software, ~~land~~ *geospatial* information, and other resources, including personnel, that is designed to or assists to efficiently collect, maintain, and disseminate all forms of geographically referenced information.

(5) "~~Land~~*Geospatial* information" means data that describes the geographic location and characteristics of natural or constructed features and boundaries within or pertaining to Montana.

(6) "State librarian" means the executive officer of the state library commission provided for in 22-1-102.

(7) "State library" means the state library provided for in 22-1-201."

**Section 6.** Section 90-1-404, MCA, is amended to read:

"**90-1-404. ~~Land~~ *Geospatial* information -- management -- duties of state library.** (1) The state library shall:

(a) serve as the administrator of the account;

(b) work with all *stakeholders, including but not limited to* federal, state, local, private, and tribal entities, to ~~develop and maintain land information~~ *prioritize needs and collect, develop, maintain, and disseminate geographic information systems, geospatial information, and geospatial technologies*;

(c) ~~annually develop a land information plan that describes the priority needs to collect, maintain, and disseminate land information. The land information plan must have as a component a proposed budget designed to accomplish the goals and objectives of the plan.~~ *prepare a geospatial information plan and operate according to the provisions of the plan. The plan:*

*(i) must be created in consultation with the council;*

*(ii) may include but is not limited to:*

*(A) the prioritized needs to collect, maintain, and disseminate geospatial information;*

*(B) priorities for geospatial coordination; and*

*(C) priorities for grant awards; and*

*(iii) must be reviewed and, if appropriate, updated every 3 years;*

~~(d) present the land information plan to the council for review and endorsement;~~

~~(e)~~*(d)* establish~~, by administrative rule,~~ an application process and a granting process that must be used to distribute funds in the account.~~;~~ ~~The granting process must give preference to interagency or intergovernmental grant requests whenever multiple state agencies, local governments or agencies, or Indian tribal governments or tribal entities have partnered together to meet a requirement of the land information plan.~~

~~(f)~~*(e)* review all grant applications ~~from state agencies, local governments or agencies, and Indian tribal governments or tribal entities for the purpose of implementing the land information plan~~;

*(f) consider grant recommendations by the council;*

(g) monitor ~~the~~ *a recipient's* use of grant funds ~~distributed to a state agency, a local government or agency, or an Indian tribal government or tribal entity or to any combination of state, local, and Indian tribal governments or entities~~ to ensure that the use of the funds complies with the purposes of this part;

(h) coordinate the development of *standards for* geographic information ~~system standards for creating land information~~ *systems, geospatial information, and geospatial technologies*;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the state library's responsibilities described in this section; *and*

~~(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information; and~~

~~(m)~~*(l)* implement the conservation easement information requirements as provided for in 76-6-212.

(2) To fulfill the responsibilities described in subsection (1), the state library or any recipient of funds granted pursuant to this part may contract with a public or private entity."

**Section 7.** Section 90-1-405, MCA, is amended to read:

"**90-1-405. ~~Land~~ *Geospatial* information advisory council -- appointments -- terms -- vacancies -- compensation.** (1) There is a ~~land~~ *geospatial* information advisory council.

(2) The council is composed of the following members:

(a) the state librarian or the state librarian's designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council;

(b) ~~the chief information officer provided for in 2-17-506 or the chief information officer's~~ *the director of the department of administration or the director's* designee; *and*

(c) to be appointed by the governor:

(i) ~~four directors of departments~~ *one director of a department* established in Title 2, chapter 15*, other than the department of administration*. ~~A~~ *The* director may designate a person to act in the director's absence.

(ii) ~~three~~ *two* persons who represent county or municipal government, at least one of whom is active in ~~land~~ *geographic* information systems;

(iii) ~~two persons who are~~ *one person who is* employed by the ~~U.S. department of agriculture~~ *federal government*;

~~(iv) two persons who are employed by the U.S. department of the interior;~~

~~(v)~~*(iv)* ~~two persons who are~~ *one person who is* active in ~~land~~ *geographic* information systems and ~~represent public utilities or~~ *represents* private businesses;

~~(vi)~~*(v)* one person who represents ~~Indian~~ tribal *government* interests;

~~(vii)~~*(vi)* one person who represents the Montana university system;

~~(viii)~~*(vii)* ~~two persons who are members~~ *one person who is a member* of a Montana association of GIS professionals; and

~~(ix)~~*(viii)* one person who represents the interests of a Montana association of registered land surveyors~~;~~

~~(d) one member of the Montana state senate, appointed by the committee on committees, who must be appointed prior to the appointment of the member described in subsection (2)(e); and~~

~~(e) one member of the Montana house of representatives, appointed by the speaker of the house of representatives, who may not be a member of the same political party as the member of the senate appointed under subsection (2)(d)~~.

(3) ~~Each council member is appointed for a 2-year term that begins on July 1 of the odd-numbered year and ends on June 30 of the succeeding odd-numbered year. A member may be reappointed to the council.~~ *Council members shall serve staggered 3-year terms. Each council member may serve a maximum of three terms.*

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not ~~a legislator or~~ an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated~~,~~ as provided in ~~2-15-124~~ *2-15-122*.

(b) A member of the council who is ~~not a legislator but is~~ an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses, as provided in 2-18-501 through 2-18-503.

~~(c) A legislator who is a member of the council is eligible to be compensated and reimbursed, as provided in 5-2-302.~~"

**Section 8.** Section 90-1-406, MCA, is amended to read:

"**90-1-406. ~~Land~~ *Geospatial* information advisory council -- duties -- advisory only.** (1) The council shall:

(a) advise the state library with regard to issues relating to the geographic information ~~system and land information~~ *systems, geospatial information, and geospatial technologies*;

(b) advise the state library on the priority of ~~land~~ *geospatial* information, including data layers, to be developed;

(c) review the ~~land~~ *geospatial* information plan described in 90-1-404 and advise the state library on any element of the plan;

(d) ~~advise the state library on the development and management of the granting process described in 90-1-404(1)(e)~~ *provide recommendations to the state library in determining grants awarded in accordance with this part*;

~~(e) advise the state library on the management of and the distribution of funds in the account~~;

~~(f)~~*(e)* assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and ~~Indian~~ tribal government entities to provide development of and maintenance of services relating to the GIS*,* ~~and land~~ *geospatial* information*, and geospatial technologies*;

~~(g)~~*(f)* promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of ~~land information~~ *geographic information systems, geospatial information, and geospatial technologies*; and

~~(h)~~*(g)* advocate for the development of consistent policies, standards, and guidelines for ~~land information~~ *geographic information systems, geospatial information, and geospatial technologies*.

(2) The council functions in an advisory capacity, as defined in 2-15-102."

**Section 9.** Section 90-1-409, MCA, is amended to read:

"**90-1-409. Montana ~~land~~ *geospatial* information account.** (1) There is established in the state special revenue fund a Montana ~~land~~ *geospatial* information account.

(2) All money received by the department of revenue pursuant to 7-4-2637(3)(a)(iii) must be deposited in the account.

(3) Funds in the account must be invested pursuant to Title 17, chapter 6, part 2. All interest and income earned on funds in the account accrue to and must be deposited in the account."

**Section 10.** Section 90-1-410, MCA, is amended to read:

"**90-1-410. Montana ~~land~~ *geospatial* information account -- distribution of funds.** (1) The state library shall annually prepare a budget to carry out the state library's responsibilities described in 90-1-404. Money in the account may be used to fund all or a portion of the budget or to otherwise accomplish the purposes of this part.

~~(2) A state agency, a local government, or an Indian tribal government entity may apply to the state library for funds in the account for the purposes described in this part.~~

~~(3)~~*(2)* The state library shall ensure that funds distributed under this ~~section~~ *part* are managed by the recipient of the funds according to standards and practices established by the state library to allow for the greatest use and sharing of ~~the land information~~ *geographic information systems, geospatial information, or geospatial technologies*."

**Section 11.** Section 90-1-411, MCA, is amended to read:

"**90-1-411. Montana ~~land~~ *geospatial* information account -- use of funds -- action by state library -- hearing.** (1) Money in the account may be used only for the purposes of this part, including purchasing technology to assist in collecting, maintaining, or disseminating ~~land information~~ *geographic information systems, geospatial information, or geospatial technologies,* and funding the budget required under 90-1-410.

*(2) The state library may award grant money from the account to a state agency, a local government, or a tribal government entity pursuant to the provisions of [section 12] for the purposes of this part.*

~~(2)~~*(3)* If the state library determines that a recipient of funds from the account has not used or is not using funds in the manner prescribed by the state library, the state library may, after notice and hearing as provided for in Title 2, chapter 4, suspend further payment to the recipient.

~~(3)~~*(4)* A recipient to whom the state library has suspended payments under this section is not eligible to receive further funds from the account until the state library determines that the recipient is using funds in the manner prescribed by the state library."

**Section 12. Geospatial information -- grants.** (1) A state agency, a local government, or a tribal government entity may apply to the state library for funds in the account. All applicants shall complete an application and provide financial information as established by the state library.

(2) The state library may provide assistance to applicants during the application process.

(3) Grants are contingent on the funds being used for the specified purpose.

(4) The state library may make a grant only if the state library determines that:

(a) the grant is consistent with the findings and purposes of this part, because it primarily adds value to Montana's geospatial information;

(b) the grant is primarily intended to be used for collecting, developing, maintaining, and disseminating geographic information systems, geospatial information, and geospatial technologies;

(c) the project for which the grant is made has prospects for achieving success given the current personnel, experience, and resources of the applicant; and

(d) the applicant has a management structure that allows the council to reasonably conclude that the applicant will comply with ongoing reporting requirements and postdisbursement monitoring activities established by the council.

(5) The state library shall develop reporting procedures to ensure that awarded grants are used for the specified purposes.

**Section 13.** Section 90-1-413, MCA, is amended to read:

"**90-1-413. Rulemaking.** ~~(1)~~ The state library ~~shall~~ *may* adopt rules ~~regarding~~ *necessary to implement and administer the provisions of this part.*~~:~~

~~(a) designing and implementing the process to develop the land information plan described in 90-1-404(1)(c);~~

~~(b) the application and granting processes provided for in 90-1-404(1)(e);~~

~~(c) the monitoring process provided for in 90-1-404(1)(g); and~~

~~(d) the process for coordinating geographic information system standards for creating land information provided for in 90-1-404(1)(h).~~

~~(2) The state library may adopt other rules considered to be necessary for the effective administration of this part.~~"

**Section 14.** Section 90-15-102, MCA, is amended to read:

"**90-15-102. Definitions.** As used in this chapter, the following definitions apply:

~~(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.~~

~~(2)~~*(1)* "Library" means the state library provided for in 22-1-201.

~~(3)~~*(2)* "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

~~(4)~~*(3)* "Principal data source agencies" means any of the following state agencies: the department of natural resources and conservation; the department of fish, wildlife, and parks; the department of environmental quality; the department of agriculture; the department of transportation; the state historical society; and the Montana university system."

**Section 15.** Section 90-15-301, MCA, is amended to read:

"**90-15-301. Establishment of information system.** (1) The library~~,~~ ~~in consultation with the committee,~~ shall establish a planning framework for the implementation of a natural resource information system and shall begin implementation of the plan. This system is to be a comprehensive program for the acquisition, storage, and retrieval of existing data relating to the natural resources of Montana.

(2) The library shall give attention to the *following* factors ~~listed in 90-15-201~~ and shall prepare any legislation necessary to implement the system*:*

*(a) the categories and types of data to be collected for a natural resource information system;*

*(b) the format of data collection;*

*(c) existing sources of relevant data in the public sector;*

*(d) data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of databases, and that use computer networking;*

*(e) probable costs to agencies furnishing required data and probable costs of managing the data;*

*(f) probable benefits to be realized by the establishment of a natural resource information system;*

*(g) operation of the Montana natural heritage program; and*

*(h) other items of importance to the establishment of a natural resource information system*.

(3) It is not intended that the system shall require fieldwork to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations."

**Section 16.** Section 90-15-303, MCA, is amended to read:

"**90-15-303. Interagency cooperation.** (1) State agencies shall cooperate with the library ~~and the committee~~ in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the library for purposes of the natural resource information system and the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the library. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data."

**Section 17. Repealer.** The following sections of the Montana Code Annotated are repealed:

90-15-201. Duties of committee.
90-15-202. Committee staff.
90-15-203. Expenses of committee members -- meetings.

**Section 18. Transition.** As of [the effective date of this act], the membership of the geospatial information advisory council must reflect the requirements of [section 7]. The term of each council member already serving on [the effective date of this act] terminates on [the effective date of this act], and vacancies filled after [the effective date of this act] must be in accordance with [section 7]. The appointments must consist of 1-year, 2-year, or 3-year terms at the governor's discretion so that the initial terms of the newly appointed council members are staggered in accordance with [section 7].

**Section 19. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 20. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 90, chapter 1, part 4, and the provisions of Title 90, chapter 1, part 4, apply to [section 12].

**Section 21. Effective date.** [This act] is effective July 1, 2023.

Approved April 18, 2023

# CHAPTER NO. 111

[HB 459]

AN ACT REVISING THE TIME FOR CLAIMING THE INTANGIBLE LAND VALUE EXEMPTION; AMENDING SECTION 15-6-240, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-6-240, MCA, is amended to read:

"**15-6-240. Intangible land value property exemption -- application procedure.** (1) There is an intangible land value assistance program that provides graduated levels of property tax exemptions to assist owners of primary residences with land values that are disproportionate to the value of a primary residence and improvements. To be eligible for the exemption, applicants must meet the requirements of this section.

(2) If the total appraised value of the land is equal to or less than 150% of the appraised value of the primary residence and improvements situated on the land, then the land exemption provided in this section does not apply.

(3) Subject to subsection (6), if the total appraised value of the land is greater than 150% of the appraised value of the primary residence and improvements situated on the land, then the land is valued at 150% of the appraised value of the primary residence and improvements situated on the land, subject to the minimum equalization of value requirement in subsection (4), and the remainder of the land value is exempt from taxation.

(4) If the calculation in subsection (3) creates a land value that is less than the statewide average value of land, then the value of the land may not be reduced in an amount that is less than the statewide average value of land multiplied by the acreage of land for the subject property.

(5) This section does not provide an exemption for the primary residence and improvements situated on the land.

(6) (a) A claim for assistance must be filed ~~by March 1 of the tax year for which the exemption is sought, on an application form provided by the department~~ *on a form provided by the department within 30 days from the date on the classification and appraisal notice, as provided for in 15-7-102, for the exemption to be considered for both years of the 2-year valuation cycle provided for in 15-7-111. An application made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle.* After an exemption is approved, the applicant remains eligible for the exemption for the remainder of the 2-year valuation cycle ~~provided for in 15-7-111~~ as long as the property is continually used as a primary residence by the applicant. An applicant who does not apply for assistance during the first year of the valuation cycle may apply ~~during~~ *no later than March 1 of* the second year of the cycle.

(b) The application form must contain:

(i) an affirmation that the applicant owns and maintains the land and improvements as the primary residence;

(ii) an affirmation that the land has been owned by the applicant or a family member of the applicant within the third degree of consanguinity for at least 30 consecutive years; and

(iii) any other information required by the department that is relevant to the applicant's eligibility.

(c) When providing information to the department for qualification under this section, applicants are subject to the false swearing penalties established in 45-7-202.

(d) The department may investigate the information provided in an application and an applicant's continued eligibility.

(e) The department may request applicant verification of the primary residence.

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

(a) "Land" means:

(i) parcels of land or lots of not more than 5 acres under single ownership that support the primary residential improvements. The term does not include parcels of land or lots that do not support the primary residential improvements, regardless of whether those parcels or lots are contiguous with or adjacent to the primary residential property.

(ii) subject to the limitations in subsection (7)(a)(i), separately assessed land on which a mobile or manufactured home is located, but only if the mobile or manufactured home and the land are both owned by the applicant.

(b) "Primary residence" means a single-family dwelling:

(i) in which an applicant can demonstrate the applicant lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which the land exemption claimed in this section is claimed by the applicant; and

(iii) that is owned or under contract for deed by the applicant.

(c) "Single-family dwelling" means a residential dwelling, manufactured home, trailer, or mobile home. The term does not include a condominium unit or a unit of a multiple-unit dwelling.

(d) "Statewide average value of land" is a value calculated by the department that is equal to the statewide average market value of 1 acre of class four real property described in 15-6-134(1)(a) through (1)(d)."

**Section 2. Applicability.** [This act] applies to property tax years beginning after December 31, 2023.

Approved April 18, 2023

# CHAPTER NO. 112

[HB 531]

AN ACT PROVIDING THAT THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS SHALL MEET AT LEAST ONCE YEARLY AS THE COMBINED STATE BOARD OF EDUCATION; AMENDING SECTION 20-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-2-101, MCA, is amended to read:

"**20-2-101. Combined boards as state board -- budget review -- officers -- meetings -- quorum.** (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least ~~twice~~ *once* yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state

board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents."

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

Approved April 18, 2023

## CHAPTER NO. 113

[HB 795]

AN ACT EXEMPTING THE DEPARTMENT OF COMMERCE AND THE COAL BOARD FROM REVIEWS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR CERTAIN GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Exemption from environmental review.** The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants related to infrastructure projects or planning pursuant to this part.

**Section 2. Exemption from environmental review.** The coal board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants related to providing government services and facilities, expediting the construction, repair, and maintenance of a highway, or paying for prepaid property taxes for a major new industrial facility pursuant to this part.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 90, chapter 6, part 7, and the provisions of Title 90, chapter 6, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 90, chapter 6, part 2, and the provisions of Title 90, chapter 6, part 2, apply to [section 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

## CHAPTER NO. 114

[HB 25]

AN ACT REPEALING THE PROPERTY TAX ABATEMENT FOR GRAY WATER SYSTEMS; REPEALING SECTIONS 15-24-3201, 15-24-3202, 15-24-3203, 15-24-3204, AND 15-24-3211, 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. Repealer.** The following sections of the Montana Code Annotated are repealed:

15-24-3201. Definitions.

15-24-3202. Gray water system for newly constructed residence -- tax abatement.

15-24-3203. Common gray water and potable water systems for newly constructed multiple dwelling projects -- tax abatement.

15-24-3204. Change in property -- fraudulent application.

15-24-3211. Report to interim committee.

**Section 2. Transition.** An abatement allowed a taxpayer prior to [the effective date of this act], under the provisions of law in effect prior to [the effective date of this act], is not impaired by [this act], and a taxpayer may receive the abatement for the time period specified when the abatement was granted.

**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 property tax years beginning after December 31, 2022.

Approved April 18, 2023

# CHAPTER NO. 115

[HB 26]

AN ACT GENERALLY REVISING HIGHWAY USE LAWS; REVISING HAY HAULING REQUIREMENTS; ELIMINATING IMPRISONMENT AS A POTENTIAL PENALTY FOR VIOLATING CERTAIN WEIGHT AND SPEED RESTRICTIONS; ELIMINATING CERTAIN PUNITIVE MEASURES FOR FAILING TO PAY A GVW FEE; REVISING POINTS OF CONTACT FOR NONRESIDENTS TO PAY FOR A PERMIT; AMENDING SECTIONS 61-10-102, 61-10-147, 61-10-209, AND 61-10-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 61-10-102, MCA, is amended to read:

"**61-10-102. Width -- definitions.** (1) Except as provided in subsections (2) and (3), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 ~~and the following requirements:~~

~~(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and~~

~~(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches~~.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) (a) The width of a recreational vehicle, as defined in 61-1-101, and a camper, as defined in 61-1-101, that is being operated for noncommercial purposes may exceed 102 inches if:

(i) the excess width is attributable to recreational vehicle or camper appurtenances that do not extend beyond the exterior rearview mirrors of the recreational vehicle, the camper, a vehicle being towed by the recreational vehicle, or the motor vehicle providing motive power; and

(ii) the rearview mirrors extend only the distance necessary to provide the appropriate field of view for the vehicle before the recreational vehicle or camper appurtenances are attached.

(b) For the purposes of this section, "recreational vehicle or camper appurtenances" means an awning and its support hardware or any appendage that is intended to be an integral part of the recreational vehicle or camper and that is installed by the manufacturer or dealer.

(4) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(5) Except as provided in subsections (2)(a) and (2)(b), a rear flag vehicle escort is not required for a vehicle that exceeds 12 1/2 feet in width, that is hauling or towing an implement of husbandry, construction equipment, or forestry equipment, and that is operating under this section or as authorized by special permit issued under 61-10-121 through 61-10-125 if the vehicle is operating at highway speed or with the flow of traffic.

(6) For the purposes of this section, the following definitions apply:

(a) "Construction equipment" means any vehicle, machine, or attachment designed or adapted for and used in construction, heavy construction, highway construction, and remodeling work.

(b) "Flag vehicle" means a vehicle equipped as required by law or by department of transportation rule to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs must be removed."

**Section 2.** Section 61-10-147, MCA, is amended to read:

"**61-10-147. Penalties for using highway when use is restricted.** (1) It is a misdemeanor for a person, firm, or corporation to violate any of the provisions of 61-10-128(2).

(2) A person, firm, or corporation first convicted of a misdemeanor for a violation of any of the provisions of 61-10-128(2) shall be punished by a fine

of not less than $10 or more than $50 ~~or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days~~. For a second conviction within 1 year the person, firm, or corporation shall be punished by a fine of not less than $50 or more than $200 ~~or by imprisonment in the county or municipal jail for not less than 25 days or more than 100 days or by both this fine and imprisonment~~. ~~Upon~~ *On* a third or subsequent conviction within 1 year after the first conviction the person, firm, or corporation shall be punished by a fine of not less than $200 or more than $500 ~~or by imprisonment in the county or municipal jail for not less than 100 days or more than 6 months or by both this fine and imprisonment~~."

**Section 3.** Section 61-10-209, MCA, is amended to read:

"**61-10-209. Monthly payment -- quarterly payment -- penalty for failure to pay fee.** (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, tractors, or buses may be paid for a 1-month period for one-twelfth the regular fee or for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee paid other than at the time of payment of the annual vehicle registration fee, an additional fee of $5 must be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which must state the months for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the 1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. ~~In addition the person is required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.~~

~~(4) If, within 5 days after a requirement under subsection (3) is applicable, a license for a full year has not been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner that is directed for these cases by the department until the requirement is met.~~"

**Section 4.** Section 61-10-213, MCA, is amended to read:

"**61-10-213. Time for payment of fees by nonresidents -- disposition.** *(1)* A nonresident owner or operator of a motortruck, truck tractor, trailer, or semitrailer shall *pay the fee and secure the permit prescribed either:*

*(a) electronically, prior to entering the state;; or*

*(b)* immediately ~~upon~~ *on* arrival in the state~~, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed~~ *by contacting the department's Helena office or the nearest open weigh station location, whether permanent or temporary.*

*(2)* All fees collected ~~shall immediately~~ *must* be remitted ~~to the county treasurer~~ *in accordance with 61-10-226*."

**Section 5. Effective date.** [This act] is effective July 1, 2023.

Approved April 18, 2023

# CHAPTER NO. 116

[HB 34]

AN ACT EXEMPTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE REQUIREMENT TO PERFORM ENVIRONMENTAL REVIEWS OF AUTHORIZATIONS FOR SPECIFIC GRANTS, LOANS, OR BONDS RELATED TO CONSERVATION, RECLAMATION, AND RENEWABLE RESOURCE ACTIVITIES.

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

**Section 1. Exemption from environmental review.** The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

**Section 2. Exemption from environmental review.** The department of natural resources and conservation is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

**Section 3. Exemption from environmental review.** The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

**Section 4. Exemption from environmental review.** The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

**Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 76, chapter 15, part 1, and the provisions of Title 76, chapter 15, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 80, chapter 7, part 10, and the provisions of Title 80, chapter 7, part 10, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 85, chapter 1, part 6, and the provisions of Title 85, chapter 1, part 6, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 90, chapter 2, part 11, and the provisions of Title 90, chapter 2, part 11, apply to [section 4].

Approved April 18, 2023

# CHAPTER NO. 117

[HB 42]

AN ACT ALLOWING QUALIFIED FISH, WILDLIFE, AND PARKS DEPARTMENT EMPLOYEES TO CARRY FIREARMS TO PERFORM THEIR ASSIGNED DUTIES; PROVIDING CRITERIA FOR WHEN AN EMPLOYEE IS ALLOWED TO CARRY A FIREARM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 87-1-201 AND 87-1-622, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-1-201, MCA, is amended to read:

"**87-1-201. Powers and duties.** (1) Except as provided in subsection ~~(12)~~ *(13)*, the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection ~~(12)~~ *(13)*, the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) *(a)* The department may not issue ~~permits to carry~~ firearms within this state to anyone except*:*

*(i)* ~~regularly appointed officers or~~ wardens*; and*

*(ii) other qualified employees identified, trained, and certified by the department where necessary to perform assigned duties pursuant to subsection (7).*

*(b) Wardens, as authorized officers under 87-1-502, are the only department employees with the authority to enforce provisions of state law or administrative rule.*

*(7) (a) Department employees may be issued a firearm as allowed in subsection (6)(a)(ii) only after submitting a form of final approval as determined and approved by the department.*

*(b) Department-issued firearms may be carried by an employee other than a warden only when the employee is engaged in work that requires the carrying of a firearm, as determined by the department.*

*(c) When a department-issued firearm is no longer necessary to perform an employee's required duties, the employee shall return the issued firearm to secure storage in the regional office to which the employee is attached.*

~~(7)~~*(8)* Except as provided in subsection ~~(12)~~ *(13)*, the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

~~(8)~~*(9)* The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

~~(9)~~*(10)* (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection ~~(9)~~ *(10)* is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection ~~(9)~~ *(10)* does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

~~(10)~~*(11)* The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

~~(11)~~*(12)* The department shall report current sage grouse population numbers, including the number of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic population data available from the department or any other source.

~~(12)~~*(13)* The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

**Section 2.** Section 87-1-622, MCA, is amended to read:

"**87-1-622. Forest management plan -- sustainable yield study required -- definition.** (1) The commission and the board shall adopt forest management plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201~~(9)(a)(iv)~~*(10)(a)(iv)*.

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and the board shall review and redetermine the annual sustainable yield for lands under their jurisdiction at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201~~(9)(a)(iv)~~*(10)(a)(iv)*;

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

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

Approved April 18, 2023

# CHAPTER NO. 118

[HB 49]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO BEER WHOLESALER AND TABLE WINE DISTRIBUTOR AGREEMENTS; REQUIRING A WHOLESALER TO NOTIFY A BEER IMPORTER OF THE FILING OF AN AGREEMENT WITH THE DEPARTMENT; REQUIRING A TABLE WINE DISTRIBUTOR TO NOTIFY THE SUPPLIER OF A FILING OF AN AGREEMENT WITH THE DEPARTMENT; AMENDING SECTIONS 16-3-226, 16-3-416, AND 16-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-3-226, MCA, is amended to read:

"**16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.** ~~An~~ *Within 60 days after [the effective date of this act], or within 60 days after entering into a new agreement, an* exact copy of all agreements, contracts, or franchises between a brewer or beer importer and a wholesaler ~~shall~~ *must* be filed *by the wholesaler* with the department as a public document and ~~shall~~ *must* be available to any of the

parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not ~~upon~~ *on* record with the department ~~shall~~ *may* not be considered by any court as having any force or effect. *The wholesaler shall notify the brewer or beer importer of the filing of the agreement with the department.*"

**Section 2.** Section 16-3-416, MCA, is amended to read:

"**16-3-416. Table wine distributor provisions.** (1) A supplier or table wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the ~~supplier~~ *table wine distributor* shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor. *The table wine distributor shall notify the supplier of the filing of the agreement with the department.*

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreements of distributorship are interpreted and governed by the laws of Montana.

(7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced.

(8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

(9) A provision in an agreement of distributorship that is inconsistent with the requirements of this section is void."

**Section 3.** Section 16-3-420, MCA, is amended to read:

"**16-3-420. Applicability.** Within 60 days after ~~October 1, 1991~~ *[the effective date of this act]*, or within 60 days after the execution of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed *by the table wine distributor* with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of 16-1-106, 16-3-401, and 16-3-415 through 16-3-421."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 119

[HB 53]

AN ACT REVISING TRANSFER DEADLINES FOR CERTAIN ACCOUNTS; AMENDING SECTIONS 15-38-301, 76-15-106, 80-7-1016, AND 85-2-280, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-38-301, MCA, is amended to read:

"**15-38-301. (Temporary) Natural resources operations state special revenue account created -- revenue allocated -- appropriations from account.** (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations 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 metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331;

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

(e) fund transfers by the legislature.

(3) ~~On July 1~~ *By August 15* of each fiscal year, the state treasurer shall transfer the amount necessary, when combined with available and unencumbered fund balance and anticipated revenue for the fiscal year, to fund the amount appropriated by the legislature in the general appropriations act from the state general fund to the natural resources operations state special revenue account for the sole purpose of funding the appropriations authorized by the legislature from the account. Prior to the closing of the fiscal year, the department shall reconcile anticipated revenue with actual revenue received. If revenue is received above the anticipated amount, the transfer in the following fiscal year shall adjust for the unanticipated amount. If revenue is received below the anticipated amount, the state treasurer shall transfer the

amount of the revenue shortfall from the general fund to the natural resources operations state special revenue account.

(4) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations.

**15-38-301. (Effective July 1, 2025) Natural resources operations state special revenue account created -- revenue allocated -- appropriations from account.** (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations 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 metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331;

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

(e) fund transfers by the legislature.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations."

**Section 2.** Section 76-15-106, MCA, is amended to read:

"**76-15-106. (Temporary) Conservation district account.** (1) There is a conservation district account in the state special revenue fund established by 17-2-102 to be administered by the department of natural resources and conservation for providing funding for conservation districts.

(2) ~~On July 1~~ *By August 15* of each fiscal year, the state treasurer shall transfer the amount necessary, when combined with available and unencumbered fund balance and anticipated revenue for the fiscal year, to fund the amount appropriated by the legislature in the general appropriations act from the state general fund to the conservation district special revenue account for the sole purpose of funding the appropriations authorized by the legislature from the account. Prior to the closing of the fiscal year, the department shall reconcile anticipated revenue with actual revenue received. If revenue is received above the anticipated amount, the transfer in the following fiscal year shall adjust for the unanticipated amount. If revenue is received below the anticipated amount, the state treasurer shall transfer the amount of the revenue shortfall from the general fund to the conservation district special revenue account. (Terminates June 30, 2023--sec. 5, Ch. 138, L. 2021.)

**76-15-106. (Effective July 1, 2023) Conservation district account.** There is a conservation district account in the state special revenue fund established by 17-2-102 to be administered by the department of natural resources and conservation for providing funding for conservation districts."

**Section 3.** Section 80-7-1016, MCA, is amended to read:

"**80-7-1016. Invasive species trust fund.** (1) There is an invasive species trust fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(2) The principal of the invasive species trust fund shall forever remain inviolate in an amount of $100 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) Except as provided in 80-7-1013 and subsection (2) of this section, money deposited in the invasive species trust fund may not be appropriated until the principal reaches $100 million.

(4) ~~On July 1 of~~ *By August 15 of* each fiscal year, the principal of the invasive species trust fund in excess of $100 million and the interest and income generated from the trust fund, excluding unrealized gains and losses, must be deposited in the invasive species account established in 80-7-1004.

(5) Deposits to the principal of the trust fund may include but are not limited to grants, gifts, transfers, bequests, or donations from any source."

**Section 4.** Section 85-2-280, MCA, is amended to read:

"**85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) ~~On July 1~~ *By August 15* of each fiscal year, the state treasurer shall transfer the amount necessary when combined with available and unencumbered fund balance, to fund the amount appropriated by the legislature in the general appropriation act from the state general fund to the water adjudication account for the sole purpose of funding the water adjudication program within the department and the water court.

(3) Interest and income earnings on the water adjudication account must be deposited in the account and may not be transferred to any other account prior to June 30, 2028.

(4) Money remaining in the water adjudication account on June 30, 2028, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, 2028--secs. 10, 11, Ch. 269, L. 2015.)"

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 120

[HB 66]

AN ACT REVISING THE LIVESTOCK PER CAPITA FEE PAYMENT DUE DATE; PROVIDING A GRACE PERIOD FOR REPORTING LIVESTOCK BROUGHT INTO THE STATE; MAKING THE LIVESTOCK PER CAPITA FEE PAYMENT DUE DATE THE SAME AS THE REPORTING DUE DATE; AMENDING SECTIONS 15-24-905 AND 15-24-921, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-24-905, MCA, is amended to read:

"**15-24-905. Livestock brought into state -- notice to department.** The owner or the agent, manager, or supervisor of any person, corporation, or association bringing livestock into this state after February 1 shall ~~immediately after the livestock cross the state line complete a livestock reporting form containing~~ *include* the name of the owner of the livestock, the number of

livestock, and the county or counties into which the livestock are moved *on a livestock reporting form due on March 1 of the following year*."

**Section 2.** Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita fee to pay expenses of enforcing livestock laws.** (1) (a) A per capita fee is authorized and directed to be imposed by the department on all poultry and honey bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state. The fee is in addition to appropriations and is to help pay the salaries and all expenses connected with the enforcement of the livestock laws of the state and bounties on wild animals as provided in 81-7-104.

(b) A per capita fee may not be imposed on bison owned by a tribal member or tribe and located on fee land or tribal land within the boundaries of a reservation.

(2) The per capita fee is due on ~~May 31~~ *March 1* of each year. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) Except as provided in subsection (1)(b), as used in this section, "livestock" means cattle, sheep, swine, poultry, honey bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, emus, and domestic ungulates."

**Section 3. Applicability.** [This act] applies to tax years beginning after December 31, 2023.

Approved April 18, 2023

# CHAPTER NO. 121

[HB 74]

AN ACT REMOVING THE REQUIREMENT THAT THE UPLAND GAME BIRD ENHANCEMENT PROGRAM FUND BIRD RELEASES; AMENDING SECTION 87-1-247, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-1-247, MCA, is amended to read:

"**87-1-247. Upland game bird enhancement program -- authorized use of funds.** (1) Subject to ~~subsections (2) and (3)~~ *subsection (2)*, revenue dedicated to the upland game bird enhancement program pursuant to 87-1-246 must be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;

(b) review potential upland game bird release sites;

(c) assist applicants in preparing management plans for project areas;

(d) evaluate the upland game bird enhancement program;

(e) develop a strategic plan pursuant to 87-1-251(2)(a);

~~(f) pursuant to subsection (2), release upland game birds in suitable habitat;~~

~~(g)~~*(f)* develop, enhance, and conserve upland game bird habitat in Montana; and

~~(h)~~*(g)* establish and assist an upland game bird citizens' advisory council pursuant to 87-1-251.

~~(2) (a) At least 15% of the funds collected under 87-1-246 must be set aside each fiscal year for expenditures related to upland game bird releases.~~

~~(b) At least 25% of the funds set aside for upland game bird releases must be spent each year.~~

~~(3)~~*(2)* As far as practicable, expenditures made pursuant to subsection (1) must be prioritized by administrative region based on need, taking into consideration any biological, recreational, or economic benefit and the objectives established in a strategic plan developed pursuant to 87-1-251(2)(a)."

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

Approved April 18, 2023

# CHAPTER NO. 122

[HB 75]

AN ACT REVISING REPORTING REQUIREMENTS FOR MOTOR FUEL TAX REFUNDS; ALLOWING THE USE OF ELECTRONIC TRANSACTION REPORTS FOR REFUND CLAIMS; AMENDING SECTIONS 15-70-426, 15-70-430, AND 15-70-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-70-426, MCA, is amended to read:

"**15-70-426. Required records.** (1) Except as provided in subsection (6), gasoline or special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Gasoline or special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a ~~separate and~~ complete invoice *identifying the type of fuel* for each withdrawal of gasoline or special fuel for which a refund is to be claimed.

(3) Special storage facilities used for certain periods must be identified and explained. If gasoline or special fuel withdrawn from special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into special storage.

(4) When no highway use of gasoline or special fuel is deducted from the claim, the applicant shall substantiate purchases of gasoline or special fuel and miles traveled for licensed motor vehicles on request of the department of transportation.

(5) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state tax on the gasoline or special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of gasoline or special fuel used in each vehicle; and

(c) purchase invoices supporting all gasoline or special fuel handled through bulk storage.

(6) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

(7) An exporter or any other person who transports gasoline or special fuel out of Montana for sale, use, or consumption outside Montana shall maintain

detailed and current records of withdrawal, transportation, ownership, and delivery of the gasoline or special fuel to destinations outside Montana as required by the department."

**Section 2.** Section 15-70-430, MCA, is amended to read:

"**15-70-430. Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtrol purchases.** (1) (a) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline or special fuel as indicated by bulk delivery invoices or by evidence of keylock, ~~or~~ cardtrol*, electronic transaction report, or retail* purchases as an estimate of off-highway use.

~~(b) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline or special fuel as indicated by evidence of retail purchases as an estimate of off-highway use.~~

~~(c)~~*(b)* To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request state or federal income tax information from the applicant or the department of revenue to determine the ratio of the applicant's gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) (a) For purposes of application for a refund under subsection (1)(a), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline or special fuel with applicable Montana tax that identifies the purchaser and specifically identifies the transaction as a keylock or cardtrol purchase.

(b) For purposes of application for a refund under subsection ~~(1)(b)~~ *(1)(a)*, the department shall accept, as evidence of retail purchases, a receipt for the sale of gasoline or special fuel with applicable Montana tax that identifies the purchaser, the physical address of the dealer, the type of fuel purchased, and the number of gallons purchased. Only retail purchases within 50 miles of the agricultural operation of the applicant are eligible for a refund.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline or special fuel according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline or special fuel tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline or special fuel tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline or special fuel tax; and

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline or special fuel tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-426."

**Section 3.** Section 15-70-432, MCA, is amended to read:

"**15-70-432. Application for refund or credit -- filing -- correction by department.** (1) (a) Except as provided in subsection (1)(b), the application for a refund must be a signed statement on a form furnished by the department.

Except for a claim for a credit for taxes paid on unpaid accounts or special fuel taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state or except for a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or ~~invoices~~ *electronic transaction report* issued to the claimant ~~at the time of each purchase and delivery~~ and must show the total amount of gasoline or special fuel purchased, the total amount of gasoline or special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records on which the claim for a refund is based.

(2) ~~A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-401,~~ *A bulk delivery invoice, receipt, keylock or cardtrol statement, or electronic transaction report that does not identify the dealer, dealer's location, purchaser, date of purchase, type of fuel, number of gallons purchased, or evidence of payment of Montana gasoline or a special fuel tax* is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 36 months after the date on which the gasoline or special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 123

[HB 76]

AN ACT GENERALLY REVISING TRANSPORTATION LAWS; PROVIDING FOR A LOCAL GOVERNMENT ROAD CONSTRUCTION AND MAINTENANCE RESTRICTED ACCOUNT; REPEALING THE BRIDGE AND ROAD SAFETY AND ACCOUNTABILITY RESTRICTED ACCOUNT, AND REPEALING AND AMENDING ASSOCIATED STATUTES; REDIRECTING FUNDING INTO THE LOCAL GOVERNMENT ROAD CONSTRUCTION MAINTENANCE ACCOUNT; REPEALING THE COUNTY COMMISSIONER'S DISCRETION TO AUTHORIZE CERTAIN USES OF COUNTY HIGHWAY OR ROAD MACHINERY OR EQUIPMENT; PROVIDING A STATUTORY APPROPRIATION; ELIMINATING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-70-101, 15-70-403, 15-70-419, 17-5-903, 17-7-502,

AND 60-3-201, MCA; REPEALING SECTIONS 7-14-102, 15-70-127, 15-70-130, AND 60-2-225, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Local government road construction and maintenance restricted account -- statutory appropriation.** (1) There is a local government road construction and maintenance restricted account in the state special revenue fund provided for in 17-2-102 to provide funding to cities, towns, counties, and consolidated city-county governments for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, and bridges. The funds in this account are statutorily appropriated, as provided in 17-7-502, to the department of transportation for distribution as provided in 15-70-101.

(2) All interest and income earned on the account must, in accordance with the provisions of 17-2-124, be deposited to the credit of the account, and any unexpended balance in the account must remain in the account. Revenue from the gasoline and special fuel taxes must be deposited in the account pursuant to 15-70-403(2)(c) and (3)(c).

(3) The money in the account is restricted as provided in Article VIII, section 6, of the Montana constitution.

**Section 2.** Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** (1) Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 17-2-124, be paid by the department from the ~~highway restricted account provided for in 15-70-126~~ *local government road construction and maintenance restricted account provided for in [section 1]* to the cities, towns, counties, and consolidated city-county governments.

(2) ~~The amount of $16,816,000 of the taxes collected under this chapter and deposited in the highway restricted account in 15-70-126 is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be distributed each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c).~~ *The allocated funds must be distributed* as follows:

(a) The amount of $150,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) ~~The amount of $6,306,000~~ *Three-eighths of the remaining amount* must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) ~~The amount of $10,360,000~~ *The remaining funds* must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys. The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of the amounts provided in 7-5-2301 and 7-5-4302.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the

department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

~~(9) Funds authorized by this section must be used for construction and maintenance programs~~

*(9) Unused balances remaining in the former 15-70-127 bridge and road safety and accountability restricted account as of June 30, 2023, must be distributed in accordance with subsections (2)(b) and (2)(c) on September 1, 2023.*"

**Section 3.** Section 15-70-403, MCA, is amended to read:

"**15-70-403. Gasoline, special fuel, and aviation fuel tax -- incidence -- rates.** (1) The incidence of the fuel tax is on the distributor for the privilege of engaging in and carrying on business in this state. Each distributor shall pay to the department of transportation a tax in an amount equal to:

(a) *33 cents* for each gallon of gasoline distributed by the distributor within the state and ~~upon~~ *on* which the gasoline tax has not been paid by any other distributor*;*~~:~~

~~(i) 31.5 cents in fiscal years 2018 and 2019;~~

~~(ii) 32 cents in fiscal years 2020 and 2021;~~

~~(iii) 32.5 cents in fiscal year 2022; and~~

~~(iv) 33 cents in fiscal year 2023 and thereafter;~~

(b) *29.75 cents* for each gallon of special fuel distributed by the distributor within the state and on which the special fuel tax has not been paid by any other distributor*; and*~~:~~

~~(i) 29.25 cents in fiscal years 2018 and 2019;~~

~~(ii) 29.45 cents in fiscal years 2020 and 2021;~~

~~(iii) 29.55 cents in fiscal year 2022; and~~

~~(iv) 29.75 cents in fiscal year 2023 and thereafter; and~~

(c) 5 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301.

(2) The gasoline tax provided for in subsection (1)(a) must be deposited as follows:

(a) the revenue from ~~23~~ *22* cents of the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d) to the highway restricted account provided for in 15-70-126;

(b) the revenue from 4 cents of the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d) to the highway patrol administration state special revenue account established in 44-1-110; and

(c) the remaining revenue from the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d) to the ~~bridge and road safety and accountability~~ *local government road construction and maintenance* restricted account provided for in ~~15-70-127~~ *[section 1]*.

(3) The special fuel tax provided for in subsection (1)(b) must be deposited as follows:

(a) the revenue from ~~23 3/4~~ *24.6* cents of the tax to the highway restricted account provided for in 15-70-126;

(b) the revenue from 4 cents of the tax to the highway patrol administration state special revenue account established in 44-1-110; and

(c) the remaining revenue from the tax to the ~~bridge and road safety and accountability~~ *local government road construction and maintenance* restricted account provided for in ~~15-70-127~~ *[section 1]*.

(4) Gasoline or special fuel may not be included in the measure of the distributor's tax if it is sold for export unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

(5) Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at a refinery or terminal for off-highway use.

(6) When no Montana fuel tax has been paid by a distributor or any other person, the department shall collect or cause to be collected from the owners or operators of motor vehicles operating on the public roads and highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and subsection (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special fuel as defined in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on the public roads and highways of this state.

(7) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that is equipped with a feed delivery box if:

(a) the feed delivery box is permanently affixed to the vehicle;

(b) the vehicle is used exclusively for the feeding of livestock; and

(c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.

(8) All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, and used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of a highway or street and its appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions, must be fuel on which Montana fuel tax has been paid.

(9) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (8) must be produced using fuel on which Montana fuel tax has been paid."

**Section 4.** Section 15-70-419, MCA, is amended to read:

"**15-70-419. 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) "Peace officer" means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-402.

(3) The peace officer shall obtain authorization from the director of the department 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 and fees, which the department shall deposit ~~in the highway restricted account provided for in 15-70-126 and the bridge and road safety and accountability restricted account provided for in 15-70-127~~ in the proportion provided by 15-70-403(2);

(ii) the interest and penalties collected under this chapter, which the department shall deposit in the highway nonrestricted account provided for in 15-70-125; and

(iii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (6); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

**Section 5.** Section 17-5-903, MCA, is amended to read:

"**17-5-903. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of commission-designated highway systems and state highways as those terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution and 15-70-126 and ~~15-70-127~~ *[section 1]* as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due."

**Section 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: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; ~~15-70-101; 15-70-130~~ *[section 1]*; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327;

22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 7.** Section 60-3-201, MCA, is amended to read:

"**60-3-201. Distribution and use of proceeds of gasoline tax.** (1) Money received in payment of the gasoline tax under 15-70-403, except those amounts paid out of the department's suspense account for gasoline tax refund, must be deposited as provided in 15-70-403(2) and (3) and used and expended as provided in 15-70-126 and ~~15-70-127~~ *[section 1]* and this section. After deductions for amounts paid out of the suspense account for gasoline

tax refunds, the remainder of the gasoline tax collected under 15-70-403 is allocated as follows:

(a) 9/10 of 1% to the state park account;

(b) 15/28 of 1% to a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund to be used pursuant to 23-2-825;

(d) 1/25 of 1% to the aeronautics revenue fund of the department under the provisions of 67-1-301; and

(e) the remaining amount as provided for in 15-70-126 and ~~15-70-127~~ *[section 1]*.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23 of the United States Code and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the noxious weed management special revenue fund provided for in 80-7-816.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) 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 operations account provided for in 67-1-308 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 not less than 1/25 of 1% is used for propelling aircraft in this state."

**Section 8. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-14-102. Allocation of state funds for public transportation.
15-70-127. Bridge and road safety and accountability restricted account.
15-70-130. Local government road construction and maintenance match program.
60-2-225. Department to maintain projects website.

**Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply to [section 1].

**Section 10. Effective date.** [This act] is effective July 1, 2023.

Approved April 18, 2023

# CHAPTER NO. 124

[HB 80]

AN ACT ADOPTING THE MOST RECENT FEDERAL MILITARY LAWS, REGULATIONS, AND CODES APPLICABLE TO THE GOVERNANCE OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

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

"**10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2021~~ *2023*, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2021~~ *2023*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

**Section 2. Applicability.** [This act] applies to events that occur and proceedings begun on or after October 1, 2023.

Approved April 18, 2023

# CHAPTER NO. 125

[HB 81]

AN ACT PROVIDING FOR A STATE VETERANS' CEMETERY IN FLATHEAD COUNTY AS FUNDING ALLOWS; AND AMENDING SECTION 10-2-601, MCA.

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

**Section 1.** Section 10-2-601, MCA, is amended to read:

"**10-2-601. State veterans' cemeteries.** (1) The board shall establish and operate state veterans' cemeteries, except as provided in subsection (4).

(2) A cemetery ~~must be~~ *is* located at Fort William Henry Harrison in Lewis and Clark County~~, Montana~~, *at Missoula,* and at Miles City. A cemetery may be located ~~in Missoula County and~~ in Yellowstone County *and in Columbia Falls in Flathead County* if funding allows.

(3) The board may establish additional state veterans' cemeteries only as funding allows.

(4) (a) The board may designate a veterans' cemetery established pursuant to 7-35-2205 as a state veterans' cemetery if:

(i) the legislature has authorized the cemetery pursuant to subsection (2) or (3); and

(ii) the board certifies that the cemetery is operated and maintained under the same standards and interment eligibility criteria as required for a state veterans' cemetery established by the board.

(b) A cemetery designated under this subsection (4) as a state veterans' cemetery must be recognized and identified as a state veterans' cemetery on official state maps, in other appropriate state publications and websites, and on appropriate state road signs."

Approved April 18, 2023

# CHAPTER NO. 126

[HB 84]

AN ACT REVISING LAWS RELATED TO THE TREATMENT OF GARBAGE FED TO SWINE; PROHIBITING THE ACT OF GARBAGE FEEDING IN THE STATE; PROVIDING FOR AN EXCEPTION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 81-2-501, 81-2-502, 81-2-504, AND 81-2-510, MCA; AND REPEALING SECTIONS 81-2-503, 81-2-505, 81-2-507, 81-2-508, AND 81-2-509, MCA.

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

**Section 1.** Section 81-2-501, MCA, is amended to read:

"**81-2-501. Definitions.** When used in this part, the following definitions apply:

(1) "Garbage" means wastes resulting from the handling, preparation, cooking, and consumption of animal products, including animal carcasses or parts of animal carcasses, or other refuse of any character that has been associated with any animal products, including animal carcasses or parts of animal carcasses. *Waste products that do not contain animal products are not considered garbage for the purpose of garbage feeding.*

(2) "Garbage feeder" means a person who handles, prepares, cooks, or otherwise treats garbage to feed to swine or other animals, as well as a person who feeds garbage to swine or other animals.

(3) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity."

**Section 2.** Section 81-2-502, MCA, is amended to read:

"**81-2-502. ~~Licenses~~ *Illegal to feed garbage to swine.*** (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals ~~without first securing a license for that purpose from the department. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in~~

~~which it is issued. The department shall establish a fee to be charged for all licenses issued under this part. All license fees collected must be paid into the state special revenue fund for the use of the department~~.

(2) This part does not apply to a person who feeds only the person's own household garbage to swine or other animals *under their ownership*."

**Section 3.** Section 81-2-504, MCA, is amended to read:

"**81-2-504. Power to adopt rules.** The department shall administer and enforce this part ~~and may adopt and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals~~*, including the adoption and enforcement of rules or orders as necessary*. ~~The rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage, and equipment, including vehicles, used for the transportation of garbage~~."

**Section 4.** Section 81-2-510, MCA, is amended to read:

"**81-2-510. Garbage originating on or removed from airplanes not to be ~~treated or~~ fed.** Garbage originating on or removed from airplanes landing in this state may not ~~be treated for feeding or~~ be fed to swine or other animals. ~~The powers granted in 81-2-505 to the department to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities at airports and aircraft~~."

**Section 5. Repealer.** The following sections of the Montana Code Annotated are repealed:

81-2-503. Applications for licenses.
81-2-505. Entry of premises for inspection -- keeping of records.
81-2-507. Power of department and board to restrain operation of garbage feeder.
81-2-508. Power to revoke license of garbage feeder.
81-2-509. Cooking or other treatment of garbage.

Approved April 18, 2023

# CHAPTER NO. 127

[HB 88]

AN ACT ELIMINATING THE THIRD-PARTY WORK PLAN REQUIREMENT AT SUPERFUND ORDER SITES; REVISING A REMEDIATION REQUIREMENT FOR PERSONS NOT SUBJECT TO A JUDICIAL OR ADMINISTRATIVE ORDER AT A COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT SITE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 75-10-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-10-711, MCA, is amended to read:

"**75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment; and

(b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or to the environment.

(3) Except as provided in 75-10-712, the department is authorized to draw on the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) a person or persons determined by the department to be liable or potentially liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails to comply with or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the person liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure or refusal to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or to the environment resulting from the release or threatened release.

(9) ~~A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department.~~ If a state or federal administrative or judicial order is issued relative to a facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing court in its discretion determines the order to be relevant and the probative value is not substantially outweighed by the danger of unfair prejudice. Admission of this evidence does not make the department a necessary party to the action. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.

(10) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.

(11) The department may take remedial action as provided for in 75-10-743(12)."

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

Approved April 18, 2023

# CHAPTER NO. 128

[HB 89]

AN ACT REVISING LAWS RELATED TO MILITARY AFFAIRS; ELIMINATING NATIONAL GUARD LIFE INSURANCE REIMBURSEMENTS; ELIMINATING STATE INCOME TAX EXEMPTIONS FOR SERVICE MEMBER LIFE INSURANCE PREMIUMS PAID; ELIMINATING LAWS REGARDING MILITARY COURTS AND COURTS-MARTIAL; AMENDING SECTIONS 15-30-2117 AND 15-30-2120, MCA; REPEALING SECTIONS

10-1-401, 10-1-402, 10-1-403, 10-1-404, 10-1-405, 10-1-406, 10-1-407, 10-1-411, 10-1-1111, 10-1-1112, 10-1-1113, AND 10-1-1114, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2117, MCA, is amended to read:

"**15-30-2117. (Temporary) Military salary, veterans' bonus, or death benefit -- exemptions.** (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) (a) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(b) (i) The salary received by residents of Montana for active duty in the national guard is exempt from state income tax.

(ii) For the purposes of this subsection (2)(b), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

~~(3) The amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.~~

~~(4)~~*(3)* The amount received by a beneficiary pursuant to 10-1-1201 is exempt from taxation under this chapter. (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021.)"

**Section 2.** Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through (3)(m);

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

~~(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;~~

~~(iv)~~*(iii)* the amount received by a beneficiary pursuant to 10-1-1201; and

~~(v)~~*(iv)* all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus

law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; and

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition

program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

10-1-401. Courts -- composition, jurisdiction, powers, and procedures.
10-1-402. Persons subject.
10-1-403. Territorial applicability.
10-1-404. Persons authorized to execute process.
10-1-405. Confinement of persons committed by military court.
10-1-406. Reporter and witness fees.
10-1-407. Fees of civil officers -- records.
10-1-411. Administration of military justice.
10-1-1111. Legislative findings -- purpose.
10-1-1112. Definitions.
10-1-1113. Account for service members' life insurance.
10-1-1114. Military service members' life insurance -- reimbursement -- eligibility.

**Section 4. Directions to code commissioner.** Section 10-1-408 is intended to be renumbered and codified as an integral part of Title 10, chapter 1, part 1.

**Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2023.

(2) [Section 2] is effective January 1, 2024.

**Section 6. Applicability.** [This act] applies to income tax years beginning after December 31, 2023.

Approved April 18, 2023

## CHAPTER NO. 129

[HB 96]

AN ACT REVISING ALCOHOLIC BEVERAGES LAWS RELATING TO THE EXAMINATION OF LICENSED PREMISES; INCLUDING ADDITIONAL LICENSEES IN THE EXAMINATION PROCESS; AMENDING SECTION 16-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-6-103, MCA, is amended to read:

"**16-6-103. Examination of ~~retailer's~~ *licensee's or agency liquor store* premises and carriers' cars and aircraft -- access control systems permitted -- rulemaking.** (1) The department of justice or its representative or a peace officer may at any time examine the premises of a ~~retail~~ licensee *or agency liquor store* to determine whether the ~~law~~ *laws* of Montana and the rules of the department or the department of justice are being complied with and also may inspect cars or aircraft of any common carrier system licensed under this code.

(2) (a) Nothing in subsection (1) prohibits a *retail* licensee who also is licensed under Title 23 from implementing an access control system that meets the requirements of this section.

(b) A *retail* licensee implementing an access control system shall notify the department and local law enforcement prior to the date the licensee begins using an access control system. A licensee shall also notify the department and local law enforcement when the licensee ceases to use the access control system.

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

(4) For the purposes of this section, the following definitions apply:

(a) "Access control system" means any system that temporarily restricts access to the licensed premises during business hours by locking the main entrance and requiring a person to gain access by approval of the licensee or employees of the licensee. An access control system must provide immediate access to the department or its representative or a local peace officer.

(b) "Immediate access" means that the department or its representative or a local peace officer who is identified as such is not unreasonably denied access to the premises."

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

Approved April 18, 2023

## CHAPTER NO. 130

[HB 100]

AN ACT REVISING LAWS RELATED TO LIVESTOCK INSPECTIONS; REQUIRING LIVESTOCK OWNERS TO CONTAIN LIVESTOCK FOR ALL INSPECTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Containment required for inspection.** (1) Livestock must be contained by the owner, agent, or custodian in a space appropriate for a required regulatory action under 81-2-102.

(2) The department may provide a chute and alley as needed to complete inspection or testing.

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

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

Approved April 18, 2023

# CHAPTER NO. 131

[HB 102]

AN ACT REVISING LAWS RELATED TO ACCREDITING ENTITIES FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 45-5-624, 50-5-101, 50-5-103, 50-5-247, AND 50-6-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 45-5-624, MCA, is amended to read:

"**45-5-624. Possession of or unlawful attempt to purchase intoxicating substance -- interference with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes, uses, has in the person's possession, or delivers or distributes without consideration an intoxicating substance. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages or marijuana. A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages or marijuana.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for a first offense, shall be fined an amount not less than $100 and not to exceed $300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than $200 and not to exceed $600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (7);

(iii) for a third or subsequent offense, shall be fined an amount not less than $300 or more than $900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (7). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse information course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than $100 or more than $300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8);

(b) for a second offense:

(i) shall be fined an amount not less than $200 or more than $600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol or drug information course at an alcohol or drug treatment program that meets the requirements of subsection (8), which may, in the court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than $300 or more than $900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol or drug information course at an alcohol or drug treatment program that meets the requirements of subsection (8), which may, in the sentencing court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage or marijuana. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged

youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (8) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment, if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (8).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(8) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by ~~the joint commission on accreditation of healthcare organizations~~ *an accrediting entity approved by the U.S. centers for medicare and medicaid services* to provide chemical dependency services.

(b) An alcohol or drug information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol or drug treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by ~~the joint commission on accreditation of healthcare organizations~~ *an accrediting entity approved by the U.S. centers for medicare and medicaid services* to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (7) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by ~~the joint commission on accreditation of healthcare organizations~~ *an accrediting entity approved by the U.S. centers for medicare and medicaid services* to provide chemical dependency services.

(9) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel.

(10) (a) A person under 21 years of age may not be charged or prosecuted under subsection (1) if:

(i) the person has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment;

(ii) the person accompanies another person under 21 years of age who has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment for the other person; or

(iii) the person requires medical treatment as a result of consuming an intoxicating substance and evidence of a violation of this section is obtained during the course of seeking or receiving medical treatment.

(b) For the purposes of this subsection (10), the following definitions apply:

(i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

(ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency medical service. (See compiler's comments for contingent termination of certain text.)"

**Section 2.** Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.~~

~~(3)~~*(2)* "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)~~*(3)* "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)~~*(4)* (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)~~ *(4)*, 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)~~*(5)* "Affected person" means an applicant for a certificate of need, a long-term care facility located in the geographic area affected by the application, an agency that establishes rates for long-term care facilities, or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.

~~(7)~~*(6)* "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)~~*(7)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a long-term care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(9)~~*(8)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(10)~~*(9)* "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)~~*(10)* "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)~~*(11)* "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)~~*(12)* "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

~~(16)~~*(13)* "Construction" means the physical erection of a new health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

(a) an existing health care facility; or

(b) a long-term care facility as defined in 50-5-301.

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18)~~*(14)* "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)~~*(15)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.~~

~~(21)~~*(16)* "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

~~(22)~~*(17)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(23)~~*(18)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(24)~~*(19)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(26)~~*(20)* (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

~~(27)~~*(21)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse

and at least one other therapeutic service and may include additional support services.

~~(28)~~*(22)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(29)~~*(23)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(30)~~*(24)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(31)~~*(25)* (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

~~(32)~~*(26)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

~~(33)~~*(27)* (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

~~(34)~~*(28)* "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

~~(35)~~*(29)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(36)~~*(30)* "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

~~(37)~~*(31)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or correctional facilities operating under the authority of the department of corrections.

~~(38)~~*(32)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(39)~~*(33)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(40)~~*(34)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(41)~~*(35)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(42)~~*(36)* (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

~~(43)~~*(37)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(44)~~*(38)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated

to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(45)~~*(39)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(46)~~*(40)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(47)~~*(41)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(48)~~*(42)* "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(49)~~*(43)* "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(50)~~*(44)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(51)~~*(45)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(52)~~*(46)* "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

~~(53)~~*(47)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(54)~~*(48)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(55)~~*(49)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(56)~~*(50)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(57)~~*(51)* (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection ~~(57)~~ *(51)*, a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;
(iii) children's hospitals;
(iv) long-term care hospitals; or
(v) critical access hospitals.

~~(58)~~*(52)* "State long-term care facilities plan" means the plan prepared by the department to project the need for long-term care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(59)~~*(53)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

~~(60) "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~"

**Section 3.** Section 50-5-103, MCA, is amended to read:

"**50-5-103. Rules and standards -- accreditation.** (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) (a) Any ~~hospital~~ *health care facility* located in this state that furnishes *to the department the* written evidence required by the department, including the recommendation for future compliance statements, ~~to the department~~ of its accreditation granted by an *accrediting* entity ~~listed in subsection (4)(b)~~ *approved by the U.S. centers for medicare and medicaid services* is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process.

~~(b) A hospital may provide evidence of its accreditation by:~~
~~(i) DNV healthcare, inc.;~~
~~(ii) the healthcare facilities accreditation program; or~~
~~(iii) the joint commission.~~

~~(c)~~*(b)* The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

~~(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.~~

~~(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards.~~

~~(7) The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.~~

~~(8) The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards.~~"

**Section 4.** Section 50-5-247, MCA, is amended to read:

"**50-5-247. Licensure of eating disorder centers -- rulemaking -- definition.** (1) The department shall license eating disorder centers that provide intensive outpatient or partial hospitalization programs for individuals with eating disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(2) The department shall adopt administrative rules for licensure, including but not limited to rules establishing:

(a) patient-to-staff ratios;

(b) the treatment services that must be available on site or through arrangements with other health care facilities, including crisis and hospital services; and

(c) license and inspection fees. Fees must be reasonably related to service costs.

(3) The rules may not establish requirements that are more stringent than standards established by ~~the commission on accreditation of rehabilitation facilities and the joint commission~~ *accrediting entities approved by the U.S. centers for medicare and medicaid services* for accreditation of behavioral health care organizations that provide care for individuals with eating disorders.

(4) For the purposes of this section, "partial hospitalization program" means an active treatment program that offers therapeutically intensive, coordinated, structured treatment services to individuals who have been diagnosed with an eating disorder. Services include day, evening, night, and weekend treatment programs that use an integrated, comprehensive, and complementary schedule of recognized treatment or therapeutic activities."

**Section 5.** Section 50-6-404, MCA, is amended to read:

"**50-6-404. Duties of trauma care committee.** The trauma care committee provided for in 2-15-2216 shall:

(1) provide recommendations and guidance to the department concerning:

(a) trauma care, including suggestions for changes to the statewide trauma care system;

(b) the implementation of a hospital data collection system; and

(c) the design and implementation of a statewide and regional quality improvement system for trauma care that considers the standards recommended by the American college of surgeons and ~~the joint commission on accreditation of healthcare organizations~~ *an accrediting entity approved by the U.S. centers for medicare and medicaid services*;

(2) assist the department in conducting statewide quality improvement and peer review functions by regularly analyzing the effect of the statewide trauma care system on patient care, morbidity, and mortality; and

(3) provide recommendations to and oversight and coordination of the activities of the regional trauma care advisory committees."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 132

[HB 104]

AN ACT REVISING LAWS REGARDING AERIAL HUNTING OF PREDATORY ANIMALS; REMOVING THE RESIDENCY REQUIREMENT FOR AERIAL HUNTING; AND REPEALING SECTION 81-7-503, MCA.

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

**Section 1. Repealer.** The following section of the Montana Code Annotated is repealed:

81-7-503. Residency requirement.

Approved April 18, 2023

# CHAPTER NO. 133

[HB 105]

AN ACT REVISING THE FUNDING REQUIREMENTS FOR RAILROAD PROTECTIVE DEVICES; AND AMENDING SECTION 15-70-102, MCA.

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

**Section 1.** Section 15-70-102, MCA, is amended to read:

"**15-70-102. Allocation of funds -- participation in railroad grade crossing protection.** (1) The amount determined necessary may be allocated from the highway restricted account provided for in 15-70-126 for each fiscal year for expenditures and commitments made for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the national, primary, or urban highway systems, as defined in 60-1-103, within the state. The department of transportation shall select those grade crossings in the state that, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost of the improvements solely from this allocation.

(2) Signal protection provided under this section is limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of the signals must be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on commission-designated highway systems, as defined in 60-1-103, within the state. ~~The highway restricted account may not be used for protection of grade crossings on the secondary system where the protection is considered necessary and when the cost is financed in part with federal-aid highway funds.~~

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to counties and cities under the provisions of 15-70-101

for participation in the installation in grade crossing protection within the county or city."

Approved April 18, 2023

# CHAPTER NO. 134

[HB 106]

AN ACT ALLOWING THE DIVISION OF DISASTER AND EMERGENCY SERVICES OF THE DEPARTMENT OF MILITARY AFFAIRS TO RECEIVE HAZARD MITIGATION ASSISTANCE GRANTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Hazard mitigation assistance grants -- acceptance -- statutory appropriation.** (1) The division may accept hazard mitigation assistance grants whenever the federal government or an agency or officer of the federal government offers funding in the form of grants to the state. Hazard mitigation assistance grants provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages.

(2) All funds received as allowed in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the division for the purposes described in subsection (1).

**Section 2.** Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; *[section 1];* 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112;

81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, part 3, and the provisions of Title 10, chapter 3, part 3, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 135

[HB 117]

AN ACT REVISING WORKING RETIREE PROVISIONS UNDER THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-731, 19-20-732, AND 19-20-734, MCA; AMENDING SECTION 4, CHAPTER

307, LAWS OF 2019; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 19-20-731, MCA, is amended to read:

"**19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits -- reporting obligation of retired member.** (1) (a) Except as provided in 19-20-732 or as otherwise provided in this section, a retired member may be employed in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) ~~one-third~~ *49%* of the sum of the member's average final compensation; or

(ii) ~~one-third~~ *49%* of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in 19-20-734 before the retired member may be employed in a position reportable to the retirement system.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in 19-20-732, the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not

limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the university system retirement program."

**Section 2.** Section 19-20-732, MCA, is amended to read:

"**19-20-732. (Temporary) Reemployment of certain retired teachers, specialists, and administrators -- procedure -- definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 27 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator. The office of public instruction shall verify that the employer has advertised the position as required under this subsection (1)(a)(iii).

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired

member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee, as provided in 5-11-210, regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

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

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

~~(a) "Administrator" means a school principal or district administrator other than a superintendent.~~

~~(b)~~*(a)* "Employer" means a school district as defined in 20-6-101 and 20-6-701 that employs a retired member and is a second-class or third-class elementary district under 20-6-201 or a second-class or third-class high school district under 20-6-301.

~~(c)~~*(b)* "Year" means all or any part of a school year. (Terminates June 30, ~~2025~~ *2027* ~~--sec. 4, Ch. 307, L. 2019~~.)

**19-20-732. ~~(Effective July 1, 2025)~~ *(Effective July 1, 2027)* Reemployment of certain retired teachers, specialists, and administrators -- procedure -- definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired

member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee in accordance with 5-11-210 regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

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

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

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year."

**Section 3.** Section 19-20-734, MCA, is amended to read:

"**19-20-734. Break-in-service requirements.** (1) Except as provided in 19-20-732 and subsection (2) of this section, a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733*:*

*(a)* based on a date of termination of January 1, 2014, ~~or later~~ *through December 31, 2023,* may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination*; or*

*(b) based on a date of termination of January 1, 2024, or later, may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 120 calendar days commencing on the first day following the member's date of termination.*

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of this section:

(a) the retired member must be returned to active member status with the retirement system retroactive to the member's date of retirement or the

date of resumption of retirement benefits, whichever is later, and the member's retirement benefits must be terminated;

(b) the member shall repay all retirement benefits received in violation of this section, plus interest at the actuarially assumed rate; and

(c) the member and the employer shall pay to the retirement system contributions on all earned compensation paid to the member for service performed during the break-in-service period, plus interest at the actuarially assumed rate.

(4) For purposes of this section, the term "employed in a position reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor."

**Section 4.** Section 4, Chapter 307, Laws of 2019, is amended to read:

**"Section 4. Termination.** [This act] terminates June 30, ~~2025~~ *2027*."

**Section 5. Effective date.** [This act] is effective July 1, 2023.

**Section 6. Termination.** [Sections 1 and 3] terminate June 30, 2027."

Approved April 18, 2023

# CHAPTER NO. 136

[HB 122]

AN ACT REVISING CONTRACT REQUIREMENTS FOR CONSTRUCTION AND OTHER SERVICES AT STATE-OWNED WATER WORKS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTION 85-1-219, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 85-1-219, MCA, is amended to read:

"**85-1-219. State-owned works -- department approval -- bids -- procurement of goods and services.** (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

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

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

~~(c) the proposed construction costs are $50,000 or less;~~

~~(d)~~*(c)* an exigency exists; *or*

~~(e)~~*(d)* the cost of goods, nonconstruction services, or professional services is $15,000 or less~~; or~~

~~(f) the cost of architectural, engineering, and land surveying services is $20,000 or less~~.

(4) (a) ~~Except as provided in subsection (4)(b), the~~ *The* provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded for construction under this section.

~~(b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are $50,000 or less.~~

~~(c)~~*(b)* The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is $15,000 or less.

~~(d)~~*(c)* (i) Except as provided in subsection (4)~~(d)~~*(c)*(ii), the department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed $15,000.

(ii) The department may contract for architectural, engineering, and land surveying services by direct negotiation when the cost of the services covered by the contract does not exceed ~~$20,000~~ *the limits provided in Title 18, chapter 8, part 2*.

(iii) The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2."

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

Approved April 18, 2023

# CHAPTER NO. 137

[HB 125]

AN ACT REVISING PUBLIC NOTICE LAWS FOR CERTAIN MONTANA FACILITY FINANCE AUTHORITY PUBLIC HEARINGS; AMENDING SECTIONS 90-7-225 AND 90-7-229, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 90-7-225, MCA, is amended to read:

"**90-7-225. Procedure prior to financing qualified small bond issue projects.** (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(l).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) ~~the~~ *The* city or county in which the project will be located must be notified *of project information, including a project description, the name of the borrower, and the approximate par value of the bonds.*~~, and the~~ *The* city and county shall, within ~~14~~ *30* days after receipt of the notice, notify the board if it elects to conduct the hearing*, even if the local government is not the issuer of the bonds.*~~; or~~

(b) ~~if~~ *If* a request for a local hearing is not received by the authority within ~~14~~ *30* days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the *authority's* hearing must be published at least ~~once a week for 2 weeks~~ *7 calendar days* prior to the date set for the hearing by publication

*on a governmental unit website and* in a newspaper of general circulation in the city or county where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing."

**Section 2.** Section 90-7-229, MCA, is amended to read:

"**90-7-229. Procedure prior to financing certain projects.** (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(l).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received by the authority within 14 days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the hearing must be published at least ~~once a week for 2 weeks~~ *7 calendar days* prior to the date set for the hearing by publication *on a governmental unit website and* in a newspaper of general circulation in the city or county *nearest to* where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project, and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing."

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

Approved April 18, 2023

# CHAPTER NO. 138

[HB 127]

AN ACT REVISING COMBINED BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSES; CREATING A COMBINED BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSE; ELIMINATING SEPARATE BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSES; REVISING DEFINITIONS; PROVIDING FOR LICENSE FEES; AMENDING SECTIONS 16-1-106, 16-3-218, AND 16-4-501, MCA; REPEALING SECTIONS 16-4-103 AND 16-4-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Combined beer wholesaler and table wine distributor license.** (1) A person desiring to sell and distribute beer, table wine, or sacramental wine at wholesale to licensed retailers or table wine to agency liquor stores under the provisions of this code shall apply to the department for a license to do so and shall submit with the application the initial license fee provided in 16-4-501. The department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) Combined beer wholesaler and table wine distributor licenses issued in any year expire on June 30 of that year at midnight.

(3) A license fee may not be imposed on combined beer wholesaler and table wine distributor licensees by a municipality or any other political subdivision of the state.

(4) The license must at all times be prominently displayed in the combined beer wholesaler and table wine distributor's licensed premises.

(5) (a) An applicant must have:

(i) a fixed place of business;

(ii) sufficient capital; and

(iii) the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of beer, table wine, or sacramental wine in large and jobbing quantities for distribution and sale in original packages to other licensed distributors, licensed retailers, or agency liquor stores.

(b) Each combined beer wholesaler and table wine distributor licensee is entitled to only one license, which must be issued for the licensee's licensed premises in Montana. A subwarehouse license may be issued for each subwarehouse operated by the licensee. The license must at all times be prominently displayed at the subwarehouse.

(6) For the purposes of this code, a holder of a combined beer wholesaler and table wine distributor license is a "beer wholesaler" and a "table wine distributor" as defined at 16-1-106.

**Section 2.** Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

*(7) "Beer wholesaler" means a person importing into or purchasing in Montana beer for sale or resale to retailers licensed in Montana.*

~~(7)~~*(8)* "Brewer" means a person who produces malt beverages.

~~(8)~~*(9)* "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

~~(9)~~*(10)* "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

~~(10)~~*(11)* "Concessionaire" means an entity that has a concession agreement with a licensed entity.

~~(11)~~*(12)* "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

~~(12)~~*(13)* "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

~~(13)~~*(14)* "Growler" means any fillable, sealable container complying with federal law.

~~(14)~~*(15)* "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

~~(15)~~*(16)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(16)~~*(17)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(17)~~*(18)* "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

~~(18)~~*(19)* "Malt beverage" means:

(a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or

(b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.

~~(19)~~*(20)* (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.

(b) The term includes but is not limited to:

(i) bottles;

(ii) cans; and

(iii) kegs.

~~(20)~~*(21)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(21)~~*(22)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

~~(22)~~*(23)* "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed with a lid, for consumption at a place other than the licensee's premises.

~~(23)~~*(24)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(24)~~*(25)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(25)~~*(26)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(26)~~*(27)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(27)~~*(28)* "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(28)~~*(29)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(29)~~*(30)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(30)~~*(31)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(31)~~*(32)* "Subwarehouse" means a building or structure owned or operated by a licensed *combined* beer wholesaler ~~or~~ *and* table wine distributor, located at

a site in Montana other than the site of the *combined* beer wholesaler's ~~or~~ *and* table wine distributor's warehouse ~~or principal place of business~~, and used for the receiving, storage, and distribution of beer*,* ~~or~~ table wine*, or sacramental wine* as permitted by this code.

~~(32)~~*(33)* "Table wine" means wine that contains not more than 16% of alcohol by volume and includes *hard* cider.

~~(33)~~*(34)* "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana *and a person importing into or purchasing in Montana table wine for sale or resale to agency liquor stores*.

~~(34)~~*(35)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed *combined* beer wholesaler ~~or~~ *and* table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(35)~~*(36)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 3.** Section 16-3-218, MCA, is amended to read:

"**16-3-218. "Distribute" defined.** As used in 16-3-219~~,~~ *and* 16-3-220~~, 16-4-103, and 16-4-108~~, "distribute" means to deliver *table wine to an agency liquor store or to deliver* beer or *table* wine to a retailer's premises licensed to sell beer, table wine, or sacramental wine as well as an alternate alcoholic beverage storage facility as allowed in 16-4-213(8)."

**Section 4.** Section 16-4-501, MCA, is amended to read:

"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) ~~each beer wholesaler, $400~~ *each license for selling and distributing beer, table wine, or sacramental wine at wholesale to licensed retailers or table wine to agency liquor stores under [section 1], $400*; each winery, $200; ~~each table wine distributor, $400;~~

(ii) for each subwarehouse, ~~$400~~ *$400*;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) $10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is $200;

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license; and

(c) a continuing care retirement community limited all-beverages license is $500 for each license.

(7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of a resort retail all-beverages license shall pay a $100,000 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another location within the boundaries of the resort area or to another owner to be used at a location within the boundaries of the resort area.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a retail beer and wine license to the Yellowstone airport is $400.

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(11) The annual fee for a distillery is $600.

(12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

**Section 5. Repealer.** The following sections of the Montana Code Annotated are repealed:

16-4-103. Wholesalers' licenses -- application and issuance -- subwarehouses -- imported beer handled through warehouse or subwarehouse -- wine storage.

16-4-108. Table wine distributor's license.

**Section 6. Transition.** The department shall reclassify existing licenses to combined licenses pursuant to [section 1] after June 30, 2024, and during the existing license's renewal.

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapter 4, part 1, apply to [section 1].

**Section 8. Effective date.** [This act] is effective July 1, 2024.

Approved April 18, 2023

# CHAPTER NO. 139

[SB 5]

AN ACT REVISING COUNTY AND MUNICIPAL PUBLIC NOTICE REQUIREMENTS; REMOVING REQUIREMENTS FOR A COUNTY TO PUBLISH NOTICE IN AN ADJACENT COUNTY IF THE COUNTY DOES NOT HAVE A QUALIFIED NEWSPAPER; ALLOWING A COUNTY OR MUNICIPALITY TO POST NOTICES TO A WEBSITE IN AREAS WHERE NO QUALIFIED NEWSPAPER EXISTS; AND AMENDING SECTIONS 7-1-2121, 7-1-4127, AND 15-18-225, 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.** (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.

(2) Publication must be in a newspaper meeting the qualifications of subsections (3) and (4), except that in a county where a newspaper does not meet these qualifications, ~~publication must be made in a qualified newspaper~~

~~in an adjacent county. If there is no qualified newspaper in an adjacent county,~~ publication must be made by posting the notice in three public places in the county~~,~~ designated by resolution of the governing body*, one of which may be the county's website if the county has an active website*.

(3) (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(5) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(6) The notice must be published twice, with at least 6 days separating each publication.

(7) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

(10) If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required."

**Section 2.** Section 7-1-4127, MCA, is amended to read:

"**7-1-4127. Publication of notice -- content -- proof.** (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less*,* ~~or~~ *in a municipality* in which a newspaper is not published*, or in a municipality within a county where a newspaper does not meet the qualifications in subsection (2)*, publication ~~may~~ *must* be made by posting in three public places in the municipality that have been designated by ordinance*, one of which may be the municipality's website if the municipality has an active website*.

(2) The newspaper must:

(a) be of general circulation;

(b) be published at least once a week;

(c) be published in the county where the municipality is located; and

(d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of paid circulation and circulation that is free; and

(iv) the method of distribution.

(3) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

~~(5) In a county where a newspaper does not meet the qualifications in subsection (2), publication must be made in a qualified newspaper in an adjacent county.~~

~~(6)~~*(5)* If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(7)~~*(6)* The notice must be published twice, with at least 6 days separating each publication.

~~(8)~~*(7)* The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

~~(9)~~*(8)* A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

~~(10)~~*(9)* Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

~~(11)~~*(10)* If the newspaper fails to publish a second notice, the municipality must be considered to have met the requirements of this section as long as the municipality submitted the required information prior to the submission deadline and the notice was posted in three public places in the municipality that were designated by ordinance and, if the municipality has an active website, was posted on the municipality's website at least 6 days prior to the hearing or other action for which notice was required."

**Section 3.** Section 15-18-225, MCA, is amended to read:

"**15-18-225. Form of cancellation -- unsuccessful auction.** The notice of cancellation of an assignment required by 15-18-220 must be made as follows:

I,....., the treasurer of..... County, certify that..... (name of the assignee or assignee's agent) of..... (address) purchased a tax lien assignment..... (assignment certificate no.) on the following property.....(full legal description) owned by.....(name of owner of record) on..... (date).

I further certify that pursuant to 15-18-219(1), the assignee made an application for a tax deed after the redemption period expired.

I further certify that pursuant to 15-18-220(1) and 7-1-2121, notice of the auction was given on..... (date) and..... (date) in..... (~~newspaper~~ *publication*).

I further certify that there were no bidders at auction or no bidder made payment as required in 15-18-220(3).

Therefore, the assignment of the tax lien is cancelled this..... (date).

.....

Name of County Treasurer"

Approved April 18, 2023

# CHAPTER NO. 140

[SB 21]

AN ACT REVISING ALCOHOLIC BEVERAGE FINGERPRINT REQUIREMENTS; ADOPTING QUALIFICATIONS FOR LOCATION MANAGERS; REVISING FINGERPRINT REQUIREMENTS TO INCLUDE LOCATION MANAGERS; DEFINING LOCATION MANAGER; AMENDING SECTIONS 16-1-106 AND 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Location managers.** (1) Each applicant and each licensee shall submit an application to the department designating at least one location manager. Except as provided in subsection (2), a location manager must meet the following requirements:

(a) the location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the location manager is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(b) the location manager has not been convicted of a felony or, if the location manager has been convicted of a felony, the location manager's rights have been restored; and

(c) the location manager is not under 19 years of age.

(2) If a location manager is an applicant or owner required to be vetted under 16-4-401, the requirements of this section do not apply.

(3) If an applicant or licensee designates a business entity as a location manager, the business entity must designate at least one officer, member, or partner that meets the requirements of subsection (1).

**Section 2.** Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

(11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

(12) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(13) "Growler" means any fillable, sealable container complying with federal law.

(14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less

than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(15) "Immediate family" means a spouse, dependent children, or dependent parents.

(16) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

*(18) "Location manager" means a person who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. A location manager may be an owner of a license, an employee of the licensee, or an entity that contracts to provide services for the licensee.*

~~(18)~~*(19)* "Malt beverage" means:

(a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or

(b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.

~~(19)~~*(20)* (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.

(b) The term includes but is not limited to:

(i) bottles;

(ii) cans; and

(iii) kegs.

~~(20)~~*(21)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(21)~~*(22)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

~~(22)~~*(23)* "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed with a lid, for consumption at a place other than the licensee's premises.

~~(23)~~*(24)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(24)~~*(25)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(25)~~*(26)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(26)~~*(27)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(27)~~*(28)* "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(28)~~*(29)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(29)~~*(30)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(30)~~*(31)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(31)~~*(32)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(32)~~*(33)* "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.

~~(33)~~*(34)* "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.

~~(34)~~*(35)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(35)~~*(36)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 3.** Section 16-4-414, MCA, is amended to read:

"**16-4-414. Fingerprints required of applicants *and location managers* -- exceptions.** (1) Except as provided in ~~subsections (2) and (3)~~ *subsection (2)*, an applicant for a license under this code, *an individual who must meet the requirements of 16-4-401 for the issuance of a new license or for the approval of the transfer of a license, and* any person employed by the applicant as a *location* manager~~, and, if the applicant is a privately held corporation, each person holding 15% or more of the outstanding stock and each officer~~ 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. ~~If the applicant is a publicly traded corporation, any person employed by the applicant as a location manager and an officer 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 officer 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).~~

*(2) (a) If the applicant is a publicly traded corporation, an officer and any person employed by the applicant as a location manager are subject to the fingerprint and background check in subsection (1).*

*(b) If the applicant employs a business entity as a location manager, a person designated pursuant to [section 1(3)] is subject to the fingerprint and background check in subsection (1).*

(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).~~

~~(4)~~*(3)* Approved applicants may use a single background check and set of fingerprints for multiple license applications within ~~3~~ *5* years. Applicants must attest that no criminal charges have been filed since the background check was last completed."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 141

[SB 36]

AN ACT ELIMINATING CERTAIN STATUTORILY REQUIRED REPORTS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 5-12-303, 52-3-115, AND 53-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-12-303, MCA, is amended to read:

"**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies and may not disclose confidential records or information to legislators.

(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier

number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

(4) (a) The department of public health and human services shall provide the legislative fiscal analyst direct access to the department's secure data warehouse as the phases of the secure data warehouse project are implemented.

(b) The department of public health and human services shall consult with the legislative fiscal analyst and shall establish user requirements to ensure the legislative fiscal analyst does not have access to direct identifiers stored on the secure data warehouse. The department of public health and human services shall consult with the legislative fiscal analyst and shall establish requirements to ensure the legislative fiscal analyst does not have access to direct identifiers stored in other data systems where the data is not available through the secure data warehouse after the phases of the secure data warehouse project are implemented.

(c) The data must be made available to the legislative fiscal analyst in a format that complies with the regulations of the respective federal programs.

~~(d) The department of public health and human services shall submit quarterly reports in an electronic format to the legislative finance committee and the children, families, health, and human services interim committee in accordance with 5-11-210 on the following:~~

~~(i) the implementation of the phases of the secure data warehouse project;~~

~~(ii) the user requirements established by the department and the legislative fiscal analyst; and~~

~~(iii) the status of the legislative fiscal analyst's access to the secure data warehouse.~~

*(d) The department of public health and human services shall provide the legislative fiscal analyst with a summary of the data available in the secure data warehouse and shall provide an update when new data sets are added. The summary must include the list of fields available for the legislative fiscal analyst to access.*

(5) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(6) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information."

**Section 2.** Section 52-3-115, MCA, is amended to read:

"**52-3-115. Older Montanans trust fund.** (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative transfer and appropriation as provided in this section.

(2) The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level, as used in 53-6-1201, of appropriations for those services.

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund.

(5) Ninety percent of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

~~(6) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210.~~"

**Section 3.** Section 53-4-209, MCA, is amended to read:

"**53-4-209. Montana parents as scholars program -- department duties.** (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds in a program to provide assistance to eligible households for the purpose of continuation of education leading toward a high school diploma, a high school equivalency diploma, vocational training, an associate's degree, or a baccalaureate degree;

(b) allow an individual receiving temporary assistance for needy families to attend an approved educational program if the individual:

(i) meets the income and resource eligibility requirements for temporary assistance for needy families; and

(ii) qualifies as a full-time student pursuant to subsection (4); and

(c) limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level.

(3) The participants may apply for and may be eligible for child-care assistance provided by the department to be paid from the temporary assistance for needy families block grant funds that are transferred to discretionary funding for child care.

(4) A program must require a participant to be a full-time student, which means that a participant:

(a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year; or

(b) must be a full-time high school student, student studying for a high school equivalency diploma, or vocational training student as defined by the institution in which the participant is enrolled;

(c) shall maintain a 2.0 grade point average on a 4.0 grade point scale or be making satisfactory progress as defined by the institution in which the participant is enrolled; and

(d) may not be allowed to remain in the program after receiving a baccalaureate degree.

(5) (a) There may be no more than 25 participants in the program at any one time.

(b) Temporary assistance for needy families participants within the 12-month period allowed by federal law do not count in the total number of participants in the parents as scholars program. However, the parents as scholars program may be used to extend a participant's education beyond the 12-month federal period.

~~(6) The department shall provide annual reports to the legislative finance committee and the children, families, health, and human services interim committee in accordance with 5-11-210.~~"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 142

[SB 39]

AN ACT REVISING AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; PROVIDING REGISTRATION REQUIREMENTS FOR ANIMAL OR HUMAN CREMATORIUMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-2-103, 75-2-215, AND 75-2-234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-2-103, MCA, is amended to read:

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

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

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

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

(4) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueducts and diversion dams;

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

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

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

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

(i) an incinerator that burns hazardous waste; or

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

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

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

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

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

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

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

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

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

(11) "Hazardous waste" means:

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

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

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

(b) Incinerator does not include:

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

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; ~~or~~

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

*(v) air pollution control devices required by state or federal rule or another applicable requirement; or*

*(vi) air pollution control devices that are:*

*(A) operating alone or at a facility where emissions are less than the permitting or registration threshold; and*

*(B) exempt from the requirements of 75-2-211 or 75-2-234.*

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

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

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

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 2.** Section 75-2-215, MCA, is amended to read:

"**75-2-215. Solid or hazardous waste incineration -- additional permit *or registration* requirements.** (1) ~~Until~~ *Except as provided in subsection (2), until* the department issues an air quality permit pursuant to 75-2-211 *or a registration in accordance with rules adopted pursuant to 75-2-234* that includes the conditions required by this section, a person may not construct, install, alter, or use*:*

*(a)* a solid or hazardous waste incinerator*;* or

*(b)* a boiler or industrial furnace subject to the provisions of 75-10-406~~, except as provided in subsection (2)~~.

(2) An existing or permitted solid or hazardous waste incinerator*,* or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit *or registration* to a facility described in subsection (1) until:

(a) the owner or operator provides to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the *registration,* permit application*,* or *permit* modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or *permit* modification;

(d) *except as provided in subsection (7),* the department reaches a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The department may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover

numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

*(7) An animal or human crematorium eligible for registration under 75-2-234 is exempt from the determination requirement established in subsection (3)(d).*"

**Section 3.** Section 75-2-234, MCA, is amended to read:

"**75-2-234. Registration.** *(1)* The department may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

*(2) Rules adopted for the registration of animal or human crematoriums must include requirements for:*

*(a) public notification prior to registration; and*

*(b) the inclusion of documentation through a registration process that provides projected emissions and ambient concentrations will constitute a negligible risk for the protection of public health, safety, and welfare and the environment.*"

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 143

[SB 43]

AN ACT REVISING NOTICE REQUIREMENTS FOR CERTAIN TIMBER SALES ON STATE LANDS; AND AMENDING SECTION 77-5-201, MCA.

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

**Section 1.** Section 77-5-201, MCA, is amended to read:

"**77-5-201. Sale of timber.** (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through 77-5-219.

(2) Timber proposed for sale in excess of 500,000 board feet must be advertised in a ~~paper of the county in which the timber is situated~~ *paper of the county in which the timber is situated or on the department's website* for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest health concerns or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 2 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Approved April 18, 2023

# CHAPTER NO. 144

[SB 48]

AN ACT REPEALING LAWS RELATED TO DETACHABLE BEVERAGE CONTAINER OPENERS; REPEALING SECTIONS 75-10-301, 75-10-302, AND 75-10-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

75-10-301. Definitions.
75-10-302. Detachable opening prohibited.
75-10-303. Violations -- penalty.

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

Approved April 18, 2023

# CHAPTER NO. 145

[SB 57]

AN ACT GENERALLY REVISING DEPARTMENT OF TRANSPORTATION CONTRACTING; PROVIDING FOR ALTERNATIVE PROJECT DELIVERY METHODS; REVISING TERMINATION DATES REGARDING ALTERNATIVE PROJECT DELIVERY; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, 60-2-112, AND 60-2-134, MCA; AMENDING SECTION 6, CHAPTER 54, LAWS OF 2017, AND SECTION 9, CHAPTER 111, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Alternative project delivery.** (1) The commission may use alternative project delivery methods for letting contracts.

(2) Once the commission, acting on a recommendation of the department, identifies a project for which an alternative project delivery method will be used and approves selection criteria proposed by the department, the department shall prepare and advertise a request for qualifications.

(3) From the responders, the department shall prepare a short list of the highest scoring responders, not to exceed five responders on any single project.

(4) The department shall announce the short list and issue a request for proposals inviting each responder on the short list to submit a technical and price proposal to the department.

(5) The department shall evaluate the technical and price proposals and present to the commission the department's written recommendation to award the contract.

**Section 2.** Section 18-8-204, MCA, is amended to read:

"**18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local agency may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local agency from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.

(4) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the transportation commission has approved *pursuant to an alternative project delivery method under [section 1] or* as part of the design-build contracting program authorized in 60-2-137. "

**Section 3.** Section 18-8-205, MCA, is amended to read:

"**18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the transportation commission has approved *pursuant to an alternative project delivery method under [section 1] or* as part of the design-build contracting program authorized in 60-2-137."

**Section 4.** Section 60-2-111, MCA, is amended to read:

"**60-2-111. (Temporary) Letting of contracts on state highways and commission-designated highway systems.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways located on commission-designated highway systems and state highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting program authorized in 60-2-137.

(4) Subject to 60-2-119, the commission may award alternative project delivery contracts in accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for those contracts. (Terminates ~~December 31, 2024~~ *June 30, 2023* ~~--sec. 6, Ch. 54, L. 2017~~.)

**60-2-111. (Effective ~~January 1, 2025~~ *July 1, 2023*) Letting of contracts on state highways and commission-designated highway systems.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways located on commission-designated highway systems and state highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting program authorized in 60-2-137.

*(4) The commission may award contracts using alternative project delivery methods in accordance with [section 1].*"

**Section 5.** Section 60-2-112, MCA, is amended to read:

"**60-2-112. (Temporary) Competitive bidding — reciprocity.** (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds $50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting program if the provisions of 60-2-137 have been met.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) Subject to 60-2-119, the commission may award general contractor construction management contracts in accordance with Title 18, chapter 2, part 5, if the provisions of 60-2-145 have been met.

(8) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101. (Terminates ~~December 31, 2024~~ *June 30, 2023*--~~sec. 6, Ch. 54, L. 2017~~.)

**60-2-112. (Effective ~~January 1, 2025~~ *July 1, 2023*) Competitive bidding -- reciprocity.** (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds $50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting program if the provisions of 60-2-137 have been met. *The commission may also award a contract using an alternative project delivery method under [section 1].*

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."

**Section 6.** Section 60-2-134, MCA, is amended to read:

"**60-2-134. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-137, *[section 1],* and this section, the following definitions apply:

(1) *(a) "Alternative project delivery method" means a process approved by the commission and recognized by the U.S. department of transportation, federal highway administration, for federal participation under the United States Code and federal regulations.*

*(b) The term does not include a design-build contract awarded by the commission under 60-2-111(3).*

*(2)* "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the

design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

~~(2)~~*(3)* "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

~~(3)~~*(4)* "Design-build *or alternative project delivery* criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build *or alternative project delivery* project.

~~(4)~~*(5)* "Request for proposals" means a part of the design-build or alternative project delivery criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

~~(5)~~*(6)* "Request for qualifications" means a part of the design-build or alternative project delivery criteria package that contains the desired minimum qualifications of the design-build *or alternative project delivery* contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective ~~design-build~~ contractors who qualify for the short list but are not awarded a contract, *if applicable,* and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider."

**Section 7.** Section 6, Chapter 54, Laws of 2017, is amended to read:

**"Section 6. Termination.** [This act] terminates ~~December 31, 2024.~~ *June 30, 2023.*"

**Section 8.** Section 9, Chapter 111, Laws of 2021, is amended to read:

**"Section 9. Termination.** [Section 1] terminates ~~December 31, 2024.~~ *June 30, 2023.*"

**Section 9. 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].

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2023

# CHAPTER NO. 146

[SB 120]

AN ACT ESTABLISHING THE CHIEF EARL OLD PERSON MEMORIAL HIGHWAY IN GLACIER COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Earl Old Person, whose Blackfoot name is Ahka Pa Ka Pee, which means "Charging Home," was born in 1929 to Juniper and Milly Old Person, who raised him near Starr School and taught him his native Blackfeet language; and

WHEREAS, at 7 years of age Earl Old Person presented Blackfeet culture to the people of Montana by performing Blackfeet song and dance when Browning

High School made its first appearance in the state basketball tournament, and continued in his youth to present Blackfeet culture to the people of the United States and the world; and

WHEREAS, Earl Old Person was elected to his first term as a tribal council member in 1954, and became chairman 10 years later, and served as chairman for 34 years; and

WHEREAS, Earl Old Person became chief of the Blackfeet Nation in 1978; and

WHEREAS, Earl Old Person delivered the first State of the Tribes address to the Montana Legislature in 1993; and

WHEREAS, Earl Old Person was an advocate of education and a leader of cultural preservation; and

WHEREAS, Earl Old Person died in 2021, and was the longest-serving elected tribal leader in the nation; and

WHEREAS, the 68th Legislature of the State of Montana honors Earl Old Person.

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

**Section 1. Chief Earl Old Person memorial highway.** (1) There is established the Chief Earl Old Person memorial highway on the existing U.S. highway 89 from its intersection with border road to its intersection with U.S. highway 2.

(2) The department shall design and install appropriate signs marking the location of the Chief Earl Old Person memorial highway.

(3) Maps that identify roadways in the state must be updated to include the Chief Earl Old Person memorial highway when the department updates and publishes the state maps.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 18, 2023

# CHAPTER NO. 147

[SB 111]

AN ACT ESTABLISHING THE JACOB ALLMENDINGER MEMORIAL HIGHWAY IN GALLATIN COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Jacob Allmendinger's family moved to Butte, Montana, when he was a child, and he went to high school in Belgrade; and

WHEREAS, Jacob Allmendinger married his high school sweetheart, Monica, and they had three children; and

WHEREAS, Jacob Allmendinger worked as a 9-1-1 dispatcher for 7 years and volunteered with the Gallatin County Sheriff's Office Search and Rescue Team for 8 years; and

WHEREAS, Jacob Allmendinger became a deputy sheriff in 2017; and

WHEREAS, Jacob Allmendinger started a landscaping business with his brother-in-law, Sergeant Brian Taylor, to further provide for his family, whom he loved more than anything in the world; and

WHEREAS, Jacob Allmendinger died in the line of duty on October 19, 2019, in a tragic vehicle accident while responding to a call for assistance near Fairy Lake; and

WHEREAS, the world was a better place for having Jacob Allmendinger in it, and his selfless legacy is evident in his children, his wife, his siblings, and all his family and will be forever remembered by the members of the Gallatin County Sheriff's Office; and

WHEREAS, the 68th Legislature of the State of Montana honors Jacob Allmendinger.

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

**Section 1. Jacob Allmendinger memorial highway.** (1) There is established the Jacob Allmendinger memorial highway on the existing Montana state highway 86 from its intersection with Fairy Lake road to its intersection with Bracket Creek road.

(2) The department shall design and install appropriate signs marking the location of the Jacob Allmendinger memorial highway.

(3) Maps that identify roadways in the state must be updated to include the location of the Jacob Allmendinger memorial highway when the department updates and publishes the state maps.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 19, 2023

# CHAPTER NO. 148

[SB 98]

AN ACT REVISING THE JURISDICTIONAL AREA OF A MUNICIPAL BOARD OF HEALTH; AND AMENDING SECTION 7-31-4101, MCA.

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

**Section 1.** Section 7-31-4101, MCA, is amended to read:

"**7-31-4101. Board of health.** The city or town council has power to provide for a board of health and to prescribe its powers and duties and, when ~~such~~ *a* board of health is provided, for the ~~same~~ *board of health* to have jurisdiction within the city or town limits ~~and within 3 miles thereof~~."

Approved April 19, 2023

# CHAPTER NO. 149

[SB 69]

AN ACT CLARIFYING THAT A PASSENGER VEHICLE USED BY A SCHOOL DISTRICT FOR TRANSPORTATION FOR SPECIAL ACTIVITIES IS NOT A SCHOOL BUS; CLARIFYING THAT A PASSENGER VEHICLE OWNED BY THE SCHOOL DISTRICT IS NOT ELIGIBLE FOR INCLUSION IN THE DISTRICT'S BUS DEPRECIATION RESERVE FUND; AMENDING SECTIONS 20-10-101, 20-10-129, 20-10-141, AND 20-10-148, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-10-101, MCA, is amended to read:

"**20-10-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Bus route" means a route approved by the board of trustees of a school district and by the county transportation committee.

(2) "Eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries:

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or

(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

*(3) (a) "Individual transportation" means transportation by which a district is relieved of actually conveying a pupil.*

*(b) The term may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.*

~~(3)~~*(4)* "Passenger seating position" means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

~~(4)~~*(5)* (a) "School bus" means, except as provided in subsection ~~(4)~~*(5)*(b), any motor vehicle that complies with the bus standards established by the board of public education as verified by the department of justice's semiannual inspection of school buses and the superintendent of public instruction and:

(i) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school; or

(ii) is district-owned, is designed to carry 10 or fewer passengers, has an overall safety rating of five stars from the national highway traffic safety administration at the time of purchase, and is insured in accordance with minimum coverage requirements set forth in 20-10-109.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations and that was purchased prior to July 1, 2017; ~~or~~

(iv) an over-the-road passenger coach used only to transport pupils to activity events*; or*

*(v) a passenger vehicle as defined in 20-10-129.*

~~(5)~~*(6)* "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) "individual transportation" ~~by which a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study~~.

~~(6)~~*(7)* "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program."

**Section 2.** Section 20-10-129, MCA, is amended to read:

"**20-10-129. Transportation for special activities.** (1) A district may use a passenger vehicle to transport students to or from school-sponsored functions or activities. A district may not use a passenger vehicle for purposes of transporting students to or from school on a regular bus route.

*(2) A passenger vehicle that is owned by the district is not eligible to be included in the calculations for the bus depreciation reserve fund under 20-10-147.*

~~(2)~~*(3)* For purposes of this section, "passenger vehicle" means a motor vehicle that is:

(a) designed to transport 8 to 15 passengers and is the size and style of vehicle necessary to meet the needs of the district; and

(b) insured in accordance with the minimum coverage requirements established in 20-10-109."

**Section 3.** Section 20-10-141, MCA, is amended to read:

"**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The mileage rates in subsection (2) for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) (a) The rate for each bus mile traveled must be determined in accordance with the following schedule:

(i) 50 cents for a school bus as defined in 20-10-101~~(4)(a)(ii)~~*(5)(a)(ii)*;

(ii) 95 cents for a school bus with a rated capacity of not more than 49 passenger seating positions;

(iii) $1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;

(iv) $1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;

(v) $1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and

(vi) $1.80 for a school bus with 80 or more passenger seating positions.

(b) Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.

(3) The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus."

**Section 4.** Section 20-10-148, MCA, is amended to read:

"**20-10-148. Cost-effectiveness analysis required before purchase of small school bus.** The trustees of a district may not purchase and operate a school bus as defined in 20-10-101~~(4)(a)(ii)~~*(5)(a)(ii)* until the trustees have:

(1) conducted an analysis of the costs associated with purchase and operation of the school bus compared to the costs associated with purchase or contract and operation of a school bus designed to carry more than 10 passengers; and

(2) adopted a written finding that the purchase and operation of a school bus as defined in 20-10-101~~(4)(a)(ii)~~*(5)(a)(ii)* is the most cost-effective means of transporting eligible transportees on the bus route or routes to which the school bus will be assigned."

**Section 5. Effective date.** [This act] is effective July 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 150

[SB 67]

AN ACT GENERALLY REVISING DRUG SCHEDULES FOR SCHEDULE I, SCHEDULE II, SCHEDULE III, SCHEDULE IV, AND SCHEDULE V CONTROLLED SUBSTANCES; PROVIDING UPDATES TO EACH LISTED SCHEDULE; AND AMENDING SECTIONS 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA.

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

**Section 1.** Section 50-32-222, MCA, is amended to read:

"**50-32-222. Specific dangerous drugs included in Schedule I.** Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

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

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

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

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

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

(e) alphameprodine;

(f) alphamethadol;

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

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide;
(i) benzethidine;
(j) betacetylmethadol;
(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;
(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
(m) betameprodine;
(n) betamethadol;
(o) betaprodine;
*(p) brorphine*
~~(p)~~*(q)* clonitazene;
~~(q)~~*(r)* dextromoramide;
~~(r)~~*(s)* diampromide;
~~(s)~~*(t)* diethylthiambutene;
~~(t)~~*(u)* difenoxin;
~~(u)~~*(v)* dimenoxadol;
~~(v)~~*(w)* dimepheptanol;
~~(w)~~*(x)* dimethylthiambutene;
~~(x)~~*(y)* dioxaphetyl butyrate;
~~(y)~~*(z)* dipipanone;
~~(z)~~*(aa)* ethylmethylthiambutene;
~~(aa)~~*(bb)* etonitazene;
~~(bb)~~*(cc)* etoxeridine;
*(dd) fluorofentanyl*
~~(cc)~~*(ee)* furethidine;
~~(dd)~~*(ff)* hydroxypethidine;
*(gg) isotonitazene*
~~(ee)~~*(hh)* ketobemidone;
~~(ff)~~*(ii)* levomoramide;
~~(gg)~~*(jj)* levophenacylmorphan;
~~(hh)~~*(kk)* 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;
~~(ii)~~*(ll)* 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide *(optical and geometric isomers only)*;
~~(jj)~~*(mm)* morpheridine;
~~(kk)~~*(nn)* MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);
~~(ll)~~*(oo)* noracymethadol;
~~(mm)~~*(pp)* norlevorphanol;
~~(nn)~~*(qq)* normethadone;
~~(oo)~~*(rr)* norpipanone;
~~(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;~~
~~(qq)~~*(ss)* PEPAP, also known as (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
~~(rr)~~*(tt)* phenadoxone;
~~(ss)~~*(uu)* phenampromide;
~~(tt)~~*(vv)* phenomorphan;
~~(uu)~~*(ww)* phenoperidine;
~~(vv)~~*(xx)* piritramide;
~~(ww)~~*(yy)* proheptazine;

~~(xx)~~*(zz)* properidine;
~~(yy)~~*(aaa)* propiram;
~~(zz)~~*(bbb)* racemoramide;
~~(aaa)~~*(ccc)* thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide;
~~(bbb)~~*(ddd)* tilidine; and
~~(ccc)~~*(eee)* trimeperidine.

(2) ~~For the purposes of subsection (1)(hh), the term "isomer" includes the optical, positional, and geometric isomers.~~ *Substituted fentanyls (1-phenethyl-4-N-propionylanilinopiperidine) are, unless specifically excepted, listed in another schedule, approved by the United States food and drug administration, or not used within legitimate and approved medical research, any material, compound, mixture, or preparation, including its salts, isomers, esters, ethers, and salts of isomers, esters, or ethers whenever the existence of those salts is possible, within any of the following chemical designations that are structurally related to fentanyl by one or more of the following modifications:*

*(a) replacement of the phenyl portion of the phenethyl group by any monocyclic ring, whether or not further substituted in or on the monocyclic ring;*

*(b) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino, or nitro groups;*

*(c) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino, or nitro groups;*

*(d) replacement of the aniline ring with any aromatic monocyclic ring, whether or not further substituted in or on the aromatic monocyclic ring; or*

*(e) replacement of the N-propionyl group by another acyl group.*

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

(a) acetorphine;
(b) acetyldihydrocodeine;
(c) benzylmorphine;
(d) codeine methylbromide;
(e) codeine-N-oxide;
(f) cyprenorphine;
(g) desomorphine;
(h) dihydromorphine;
(i) drotebanol;
(j) etorphine, except hydrochloride salt;
(k) heroin;
(l) hydromorphinol;
(m) methyldesorphine;
(n) methyldihydromorphine;
(o) morphine methylbromide;
(p) morphine methylsulfonate;
(q) morphine-N-oxide;
(r) myrophine;
(s) nicocodeine;
(t) nicomorphine;
(u) normorphine;
(v) pholcodine; and
(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that

contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

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

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

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

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

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

(f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;

(g) 3,4-methylenedioxyamphetamine;

(h) 2,5-dimethoxy-4-ethylamphetamine, also known as DOET;

(i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;

(j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;

(k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;

(l) 5-methoxy-3,4-methylenedioxyamphetamine;

(m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;

(n) 3,4-methylenedioxymethamphetamine, also known as MDMA;

(o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy)phenethylamine and N-hydroxy MDA;

(q) 3,4,5-trimethoxyamphetamine;

(r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;

(s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;

(t) dimethyltryptamine, also known as DMT;

(u) hashish;

(v) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;

(w) lysergic acid diethylamide, also known as LSD;

(x) marijuana;

(y) mescaline;

(z) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8*6*,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;

(aa) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;

(bb) N-ethyl-3-piperidyl benzilate;

(cc) N-methyl-3-piperidyl benzilate;

(dd) psilocybin;

(ee) psilocyn*, also known as psilocin*;

(ff) tetrahydrocannabinols, *neutral compounds, and their corresponding acids,* including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(ff)(i) through (4)(ff)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta ~~1~~ *9* (delta ~~9~~ *1*) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta ~~6~~ *8 (delta 6)* cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta *6a, 10a, (delta* 3,4*)* cis or trans tetrahydrocannabinol and its optical isomers~~;~~.

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

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

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

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

(kk) synthetic cannabinoids, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(mm) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, *in an administrative rule regulating controlled substances, or approved for use by the United States food and drug administration, that is* structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) mecloqualone; and

(c) methaqualone*;*

*(d) substituted benzodiazepines, unless specifically excepted, listed in another schedule, in an administrative rule regulating controlled substances, approved for use by the United States food and drug administration, or not used within legitimate and approved medical research, any material, compound, mixture, or preparation, including its salts, isomers, and salts of isomers whenever the existence of such salts is possible, within any of the following chemical designations that are structurally related to:*

*(A) a 1,4-benzodiazepine structure with any substitution at the 5-position, whether or not the 1,4-benzodiazepine is further substituted;*

*(B) a 1,4-benzodiazepine structure fused with a triazole ring to form a triazolobenzodiazepine structure with any substitution at the 6-position, whether or not the triazolobenzodiazepine is further substituted;*

*(C) a 1,4-diazepine ring fused with a thiophene ring and triazole ring to form a thienotriazolodiazepine structure with any substitution at the 4-position, whether or not the thienotriazolodiazepine is further substituted;*

*(D) a 1,4-diazepin-one ring fused with a thiophene ring to form a thienodiazepine structure with any substitution at the 5-position, whether or not the thienodiazepine is further substituted;*

*(E) a 1,5-benzodiazepine structure with any substitutions at the 4-position, whether or not the 1,5-benzodiazepine is further substituted; or*

*(F) a 1,5-benzodiazepine structure with any substitutions at the 5- nitrogen position, whether or not the 1,5-benzodiazpine is further substituted.*

*(7) Any compound that meets the criteria in subsection (6)(d) but is designated as a Schedule II, Schedule III, Schedule IV, or Schedule V controlled substance under federal law, will be placed in the same Schedule as under federal law.*

~~(7)~~*(8)* Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

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

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

(c) fenethylline;

(d) methcathinone, also known as 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one,

alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

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

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

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

(h) N-ethylamphetamine; and

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

~~(8)~~*(9)* Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

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

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

~~(9)~~*(10)* If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to the same schedule it is placed in by the United States drug enforcement administration.

~~(10)~~*(11)* Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue."

**Section 2.** Section 50-32-224, MCA, is amended to read:

"**50-32-224. Specific dangerous drugs included in Schedule II.** Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, *naldemedine,* nalmefene, naloxone, *6β-naltrexol,* naltrexone, ~~and~~ naloxegol*, and samidorphan* and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) dihydroetorphine;

(ix) ethylmorphine;

(x) etorphine hydrochloride;

(xi) hydrocodone;

(xii) hydromorphone;

(xiii) metopon;

(xiv) morphine;

*(xv) noroxymorphone;*

~~(xv)~~*(xvi)* oripavine;
~~(xvi)~~*(xvii)* oxycodone;
~~(xvii)~~*(xviii)* oxymorphone; and
~~(xviii)~~*(xix)* thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include*:*

*(i)* decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; ~~and~~ *or;*

*(ii) [*$^{123}$*I]ioflupane.*

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

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

(a) alfentanil;
(b) alphaprodine;
(c) anileridine;
(d) bezitramide;
(e) bulk dextropropoxyphene (nondosage forms);
(f) carfentanil;
(g) dihydrocodeine;
(h) diphenoxylate;
(i) fentanyl;
(j) isomethadone;
(k) levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
(l) levomethorphan;
(m) levorphanol;
(n) metazocine;
(o) methadone;
(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
*(r) oliceridine N-[(3-methoxythiophen-2-yl)methyl]({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine);*
~~(r)~~*(s)* pethidine, also known as meperidine;
~~(s)~~*(t)* pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
~~(t)~~*(u)* pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
~~(u)~~*(v)* pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
~~(v)~~*(w)* phenazocine;
~~(w)~~*(x)* piminodine;

~~(x)~~*(y)* racemethorphan;
~~(y)~~*(z)* racemorphan;
~~(z)~~*(aa)* remifentanil;
~~(aa)~~*(bb)* sufentanil;
~~(bb)~~*(cc)* tapentadol; and
~~(cc)~~*(dd)* thiafentanil.

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

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(b) phenmetrazine and its salts;
(c) lisdexamfetamine, its salts, isomers, and salts of its isomers;
(d) methamphetamine, its salts, isomers, and salts of its isomers; and
(e) methylphenidate.

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

(a) amobarbital;
(b) glutethimide;
(c) pentobarbital;
(d) phencyclidine; and
(e) secobarbital.

(5) Hallucinogenic substances include the following:

(a) dronabinol in oral solution in a drug product approved for marketing by the United States food and drug administration;

(b) nabilone, also known as (levo-dextro)-trans-3-(1, 1-dimethylhepty-l)-6,6-alpha,7,8,10,10-alpha-hexahydro-1-hydroxy-6,6-dimethyl-9H-diben-zo[b,d] pyran-9-one.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

(a) 4-Anilino-N-phenethyl-4-piperidine (ANPP);

(b) phenylacetone, an immediate precursor to amphetamine and methamphetamine, also known as phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone; ~~and~~

(c) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP)*; and*

*(d) N-phenyl-N-(piperidin-4-yl)propionamide (norfentanyl).*"

**Section 3.** Section 50-32-226, MCA, is amended to read:

"**50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

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

(a) benzphetamine;
(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the United States food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) aprobarbital;

(e) butabarbital, also known as secbutabarbital;

(f) butalbital;

(g) butobarbital, also known as butethal;

(h) chlorhexadol;

(i) embutramide;

(j) gamma hydroxybutyric acid preparations;

(k) ketamine, its salts, isomers, and salts of its isomers, also known as (±)-2-(2-chlorophenyl)-2- (methylamino)cyclohexanone;

(l) lysergic acid;

(m) lysergic acid amide;

(n) methyprylon;

(o) sulfondiethylmethane;

(p) sulfonethylmethane;

(q) sulfonmethane;

(r) talbutal;

(s) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(t) thiamylal;

(u) thiopental; and

(v) vinbarbital.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(d) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(g) any material, compound, mixture, or preparation containing buprenorphine.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including *its* salts, isomers, *esters, or ethers* and salts of isomers*, esters, and ethers* whenever the existence of those salts ~~of isomers~~ is possible within the specific chemical designation:

(a) androstanedione, also known as 5-alpha-androstan-3,17-dione;

(b) 1-androstenediol, also known as 3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene; or 3-alpha, 17-beta-dihydroxy-5-alpha-androst-1-ene;

(c) 1-androstenedione, also known as 5-alpha-androst-1-en-3,17-dione;

(d) 3-alpha,17-beta-dihydroxy-5-alpha-androstane;

(e) 3-beta,17-beta-dihydroxy-5-alpha-androstane;

(f) 4-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-4-ene;

(g) 4-androstenedione, also known as androst-4-en-3,17-dione;

(h) 4-dihydrotestosterone, also known as 17-beta-hydroxyandrostan-3-one;

(i) 4-hydroxy-19-nortestosterone, also known as 4,17-beta-dihydroxy-estr-4-en-3-one;

(j) 4-hydroxytestosterone, 4,17-beta-dihydroxy-androst-4-en-3-one;

(k) 5-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-5-ene;

(l) 5-androstenedione, also known as androst-5-en-3,17-dione;

(m) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;

(n) 17-alpha-methyl-3-alpha, 17-beta-dihydroxy-5-alpha-androstane;

(o) 17-alpha-methyl-3-beta, 17-beta-dihydroxy-5-alpha-androstane;

(p) 17-alpha-methyl-3-beta, 17-beta-dihydroxyandrost-4-ene;

(q) 17-alpha-methyl-4-hydroxynandrolone, also known as 17-alpha-methyl-4-hydroxy-17-beta- hydroxyestr-4-en-3-one;

(r) 17-alpha-methyl-delta, 1-dihydrotestosterone, also known as 17-beta-hydroxy-17-alpha-methyl-5- alpha-androst-1-en-3-one, 17-alpha-methyl-1 testosterone;

(s) 19-nor-4-androstenediol, also known as 3-beta-17-beta-dihydroxyestr-4-ene; or 3-alpha-17-beta- dihydroxyestr-4-ene;

(t) 19-nor-4-androstenedione, also known as estr-4-en-3,17-dione;

(u) 19-nor-5-androstenediol, also known as 3-beta,17-beta-dihydroxyestr-5-ene; or 3-alpha,17-beta- dihydroxyestr-5-ene;

(v) 19-nor-5-androstenedione, also known as estr-5-en-3,17-dione;

(w) calusterone, also known as 7-beta, 17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(x) 19-Nor-4,9(10)-androstadienedione, also known as estra-4,9(10)-diene-3,17-dione;

(y) bolasterone, also known as (7-alpha-dimethyl)-17-beta-hydroxyandrost-4-ene-3-one;

(z) boldenone, also known as 17-beta-hydroxyandrost-1,4,-diene-3-one;

(aa) boldione, also known as androsta-1,4-diene-3,17-dione;

(bb) chlorotestosterone, also known as 4-chlortestosterone;

(cc) clostebol;

(dd) delta-1-dihydrotestosterone, also known as (17-beta-hydroxy-5-alpha-androst-1-en-3-one), 1-testosterone;

(ee) dehydrochloromethyltestosterone, also known as 4-chloro-17-beta-hydroxy-17-alpha-methylandrost- 1,4-dien-3-one;

(ff) desoxymethyltestosterone, also known as 17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol;

(gg) dihydrochlormethyltestosterone;

(hh) dihydrotestosterone, also known as 4-dihydrotestosterone;

(ii) drostanolone, also known as 17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one;

(jj) ethylestrenol, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-ene;

(kk) fluoxymesterone, also known as 9-fluoro-17-alpha-methyl-11-beta, 17-beta-dihydroxyandrost- 4-en-3-one;

(ll) formebulone, also known as 2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4- dien-3-one or formebolone;

(mm) furazabol, also known as 17-alpha-methyl-17-beta-hydroxyandrostano-[2,3-c]-furazan;

(nn) mestanolone, also known as 17-alpha-methyl-17-beta-hydroxy-5-alpha-androstan-3-one;

(oo) mesterolone, also known as 1-alpha-methyl-17-beta-hydroxy-(5-alpha)-androstan-3-one;

(pp) methandienone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-1,4-diene-3-one;

(qq) methandranone;

(rr) methandriol, also known as 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-one;

(ss) methandrostenolone, also known as (17-beta)-17-hydroxy-17-methylandrosta-1,4-dien-3-one;

(tt) methasterone, also known as 2-alpha-17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one;

(uu) methenolone, also known as 1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one;

(vv) methyldienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9-(10)-dien-3-one;

(ww) methyltestosterone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one;

(xx) methyltrienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one;

(yy) mibolerone, also known as 17-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one;

(zz) nandrolone, also known as 17-beta-hydroxyestr-4-en-3-one;

(aaa) norbolethone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one;

(bbb) norclostebol, also known as 4-chloro-17-beta-hydroxyestr-4-en-3-one;

(ccc) norethandrolone, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one;

(ddd) normethandrolone, also known as 17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one;

(eee) oxandrolone, also known as 17-alpha-methyl-17-beta-hydroxy-2-oxa-(5-alpha)-androstan-3-one;

(fff) oxymestrone, also known as 17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one;

(ggg) oxymetholone, also known as 17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-(5-alpha)- androstan-3-one;

(hhh) prostanozol, also known as 17-beta-hydroxy-5-alpha-androstano[3,2-c]pryazole;

(iii) stanolone;

(jjj) stanozolol, also known as 17-alpha-methyl-17-beta-hydroxy-(5-alpha)-androst-2-eno-(3,2-c)- pyrazole;

(kkk) stenbolone, also known as 17-beta-hydroxy-2-methyl-5-alpha-androst-1-en-3-one;

(lll) talbutal, also known as 5-(1-methylpropyl)-5-(2-propenyl)-2,4,6(1H,3H,5H)-pyrimidinetrione;

(mmm) testolactone, also known as 13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone;

(nnn) testosterone, also known as 17-beta-hydroxyandrost-4-en-3-one;

(ooo) trenbolone, also known as 17-beta-hydroxyestr-4,9,11-trien-3-one; or

(ppp) tetrahydrogestrinone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien- 3-one.

(6) Hallucinogenic substances include dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product, also known as (6-alpha-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(7) Anticonvulsant substances include perampanel."

**Section 4.** Section 50-32-229, MCA, is amended to read:

"**50-32-229. Specific dangerous drugs included in Schedule IV.** Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) butorphanol;

(c) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);

(d) difenoxin 1mg/25ug AtSO4/du;

(e) pentazocine; and

(f) tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol).

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

(a) alprazolam;

(b) barbital;

*(c) brexanolone;*

~~(c)~~*(d)* bromazepam;

~~(d)~~*(e)* camazepam;

~~(e)~~*(f)* chloral betaine;
~~(f)~~*(g)* chloral hydrate;
~~(g)~~*(h)* chlordiazepoxide;
~~(h)~~*(i)* clobazam;
~~(i)~~*(j)* clonazepam;
~~(j)~~*(k)* clorazepate;
~~(k)~~*(l)* clotiazepam;
~~(l)~~*(m)* cloxazolam;
*(n) daridorexant;*
~~(m)~~*(o)* delorazepam;
~~(n)~~*(p)* diazepam;
~~(o)~~*(q)* dichloralphenazone;
~~(p)~~*(r)* estazolam;
~~(q)~~*(s)* ethchlorvynol;
~~(r)~~*(t)* ethinamate;
~~(s)~~*(u)* ethyl loflazepate;
~~(t)~~*(v)* fludiazepam;
~~(u)~~*(w)* flunitrazepam;
~~(v)~~*(x)* flurazepam;
~~(w)~~*(y)* fospropofol, also known as lusedra;
~~(x)~~*(z)* halazepam;
~~(y)~~*(aa)* haloxazolam;
~~(z)~~*(bb)* ketazolam;
*(cc) lemborexant;*
~~(aa)~~*(dd)* loprazolam;
~~(bb)~~*(ee)* lorazepam;
~~(cc)~~*(ff)* lormetazepam;
~~(dd)~~*(gg)* mebutamate;
~~(ee)~~*(hh)* medazepam;
~~(ff)~~*(ii)* meprobamate;
~~(gg)~~*(jj)* methohexital;
~~(hh)~~*(kk)* methylphenobarbital, also known as mephobarbital;
~~(ii)~~*(ll)* midazolam;
~~(jj)~~*(mm)* nimetazepam;
~~(kk)~~*(nn)* nitrazepam;
~~(ll)~~*(oo)* nordiazepam;
~~(mm)~~*(pp)* oxazepam;
~~(nn)~~*(qq)* oxazolam;
~~(oo)~~*(rr)* paraldehyde;
~~(pp)~~*(ss)* petrichloral;
~~(qq)~~*(tt)* phenobarbital;
~~(rr)~~*(uu)* pinazepam;
~~(ss)~~*(vv)* prazepam;
~~(tt)~~*(ww)* quazepam;
*(xx) remimazolam;*
~~(uu)~~*(yy)* temazepam;
~~(vv)~~*(zz)* tetrazepam;
~~(ww)~~*(aaa)* triazolam;
~~(xx)~~*(bbb)* zaleplon;
~~(yy)~~*(ccc)* zolpidem; and
~~(zz)~~*(ddd)* zopiclone.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether

optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

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

(a) cathine, also known as (+)-norpseudoephedrine;

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

(e) mazindol;

(f) mefenorex;

(g) modafinil;

(h) pemoline, including organometallic complexes and chelates thereof;

(i) phentermine;

(j) pipradrol;

*(k) serdexmethylphenidate;*

~~(k)~~*(l)* sibutramine; ~~and~~

*(m) solriamfetol (2-amino-3-phenylpropyl carbamate; benzenepropanol, beta-amino-, carbamate (ester)); and*

~~(l)~~*(n)* SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of carisoprodol, including its salts, isomers, and salts of isomers.

(7) Hypnotic substances include suvorexant.

(8) Anorexiant substances include lorcaserin.

(9) Gastrointestinal substances include eluxadoline.

(10) General anesthetic substances include alfaxalone."

**Section 5.** Section 50-32-232, MCA, is amended to read:

"**50-32-232. Specific dangerous drugs included in Schedule V.** Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

(3) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) lacosamide, also known as (R)-2-acetoamido-N-benzyl-3-methoxypropionamide or vimpat; and

(b) pregabalin, also known as (S)-3-(aminomethyl)-5-methylhexanoic acid or lyrica.

~~(4) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the United States food and drug administration that contains cannabidiol, also known as (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol), derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols.~~

~~(5)~~*(4)* Anticonvulsant substances include the following:

(a) ezogabine; ~~and~~

(b) brivaracetam*;*

*(c) cenobamate; and*

*(d) ganaxalone.*

*(5) Antimigraine substances including lasmiditan.*"

Approved April 19, 2023

# CHAPTER NO. 151

[SB 13]

AN ACT PROVIDING ADDITIONAL TYPES OF BODILY FLUIDS TO TEST FOR THE PRESENCE OF DRUGS IN DRIVING WHILE UNDER THE INFLUENCE CASES; AMENDING SECTIONS 23-2-535, 61-8-1010, 61-8-1016, 61-8-1018, 61-8-1019, 61-8-1032, AND 67-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 23-2-535, MCA, is amended to read:

"**23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol *or drugs* in a person at the time of the act alleged, as shown by analysis of the

person's blood, breath, *oral fluid,* or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-8-1001."

**Section 2.** Section 61-8-1010, MCA, is amended to read:

"**61-8-1010. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, in addition to the punishments listed in 61-8-1007, the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or the laws of another state, or the suspension was under 61-8-1016 or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in 61-8-1002 and 61-8-1007, the court shall ~~require the person~~:

(a) *require the person* to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-1033. A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state

or the United States. Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

*(3) All court-approved alcohol or drug detection testing programs allowed under this section are required to use the state's data management system pursuant to 44-4-1203.*"

**Section 3.** Section 61-8-1016, MCA, is amended to read:

"**61-8-1016. Implied consent -- blood or breath tests for alcohol, *blood or oral fluid for* drugs, or *testing for* both -- *alcohol and drugs using recognized methods for each* -- refusal to submit to test -- administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or *blood or oral fluid for the purpose of determining any measured amount or detected presence of* drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of 61-8-1019(5).

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in 61-8-1002 or an offense that meets the definition of aggravated driving under the influence in 61-8-1001;

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of 61-8-1002(1)(e); or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in 61-8-1002, and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in 61-8-1002, and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in 61-8-1002 and meets the definition of aggravated driving under the influence in 61-8-1001.

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in 61-8-1017 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of 61-8-1002 or an offense meeting the definition of aggravated driving under the influence in 61-8-1001, and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including 61-8-1002, an offense that meets the definition of aggravated driving under the influence in 61-8-1001, or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) ~~Upon~~ *On* the person's refusal to provide the breath, blood, urine, *oral fluid,* or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood *or oral fluid* for testing.

(c) (i) ~~Upon~~ *On* the person's refusal to provide a breath, blood, urine, *oral fluid,* or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in 61-8-1032.

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in 61-8-1017.

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood ~~or,~~ breath*, or urine* used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood ~~or~~*,* breath*, or urine* for law enforcement purposes as provided in 46-4-301 and 61-8-1019(6)."

**Section 4.** Section 61-8-1018, MCA, is amended to read:

"**61-8-1018. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including 61-8-1002, an offense that meets the definition of

aggravated driving under the influence in 61-8-1001, a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood ~~or~~*,* breath, *or oral fluid* is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of 61-8-1002(1)(a) based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood ~~or~~*,* breath*, or oral fluid* is admissible in evidence if:

(i) a breath test*, oral fluid screening test,* or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-1019(1); and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-1016, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

**Section 5.** Section 61-8-1019, MCA, is amended to read:

"**61-8-1019. Administration of tests.** (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath *or oral fluid*.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to

obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-1002, meets the definition of aggravated driving under the influence as defined in 61-8-1001, or has violated 61-8-805 and a sample of blood, breath, *oral fluid,* urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

**Section 6.** Section 61-8-1032, MCA, is amended to read:

"**61-8-1032. Mandatory suspension of license following certain implied consent action.** (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to 61-8-1016, an individual has refused a test or tests of the person's blood, breath, *oral fluid,* urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of $300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or breath to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license

or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license 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. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-1017."

**Section 7.** Section 67-1-211, MCA, is amended to read:

"**67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in 61-8-1001, of 0.04% by weight or more, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, *oral fluid,* or urine for the purpose of determining any measured amount or detected presence of alcohol *or drugs* in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, *oral fluid,* or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 152

[SB 1]

AN ACT ALIGNING THE PAYMENT SCHEDULE FOR THE COAL-FIRED GENERATING UNIT CLOSURE MITIGATION BLOCK GRANT WITH THE PAYMENT SCHEDULE FOR GUARANTEED TAX BASE AID; AMENDING SECTION 20-9-638, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-9-638, MCA, is amended to read:

"**20-9-638. Coal-fired generating unit closure mitigation block grant.** (1) (a) The office of public instruction shall provide a coal-fired generating unit closure mitigation block grant to each school district with a fiscal year 2017 taxable valuation that includes a coal-fired generating unit with a generating capacity that is greater than or equal to 200 megawatts, was placed in service prior to 1980, and is retiring or planned for retirement on or before July 1, 2022.

(b) The electronic reporting system that is used by the office of public instruction and school districts must be used to allocate the block grant amount into each district's general fund budget as an anticipated revenue source.

(2) Each year, 70% of each district's block grant must be distributed in ~~November~~ *December* and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(3) The block grant is equal to the amount received in fiscal year 2017 by the district general fund from the block grants provided for in former 20-9-630(4)(a) as that section read prior to July 1, 2017.

(4) (a) If the owner of a coal-fired generating unit that is retired or planned for retirement on or before July 1, 2022, makes a payment in accordance with a retirement plan approved by the department of environmental quality or a transition agreement with the governor and attorney general for the purpose of decommissioning requirements and a portion of the payment is allocated to a school district for the purposes of school funding cost shifts, then that portion must repay to the state general fund the cost of the block grant payments under this section, as discounted in accordance with an agreement for payment to the state, on the following schedule, not to exceed the limitation provided in subsection (4)(b):

(i) if the generating unit closes prior to June 30, 2018, 100% of the total block grant payments under this section must be returned to the general fund;

(ii) if the generating unit closes during fiscal year 2019, 90% of the block grant payments under this section must be returned to the general fund;

(iii) if the generating unit closes during fiscal year 2020, 80% of the block grant payments under this section must be returned to the general fund;

(iv) if the generating unit closes during fiscal year 2021, 70% of the block grant payments under this section must be returned to the general fund; and

(v) if the generating unit closes during fiscal year 2022 or on July 1, 2022, 60% of the block grant payments under this section must be returned to the general fund.

(b) Repayment under subsection (4)(a) may not exceed the amount of any portion of a payment allocated to a school district in accordance with a retirement plan or a transition plan."

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

Approved April 19, 2023

# CHAPTER NO. 153

[HB 176]

AN ACT REVISING LAWS RELATED TO COUNTY UTILITY PERMITTING AUTHORITY; REVISING THE PAYMENT OF DAMAGES; AMENDING SECTIONS 7-13-2101, 7-13-2103, AND 7-13-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-13-2101, MCA, is amended to read:

"**7-13-2101. Authority to permit construction of utility mains.** The board of county commissioners shall have the power and authority to grant to any person, association, or corporation the right to construct and maintain in, along, and under any public road or highway within ~~such~~ *a* county, *within any county easements, on or within any county-owned property, within any county utility corridor, and within any county right-of-way* any pipeline for the conveyance of natural or artificial gas, water, *broadband infrastructure,* or any other substance for the use of any county, city, or town or ~~the~~ *its* inhabitants ~~thereof~~."

**Section 2.** Section 7-13-2103, MCA, is amended to read:

"**7-13-2103. Payment of damages and restoration of road.** The person, association, or corporation owning or constructing ~~such~~ *a* pipeline *or other required infrastructure*:

(1) shall compensate ~~such~~ *a* county for any ~~and all~~ damages done to any ~~such~~ road or highway in the laying, construction, or maintenance of ~~such~~ *a* pipeline*, broadband, or other required infrastructure*; and

(2) shall promptly restore any ~~such~~ road or highway to its former condition of usefulness, without interference with the traffic ~~thereon~~ *on it*."

**Section 3.** Section 7-13-4101, MCA, is amended to read:

"**7-13-4101. Authority to permit laying of utility mains.** (1) The city or town council has power to permit the use of the streets and alleys*, other property, rights-of-way, utility corridors, or easements* of the city or town for the purpose of laying down gas, water, and other mains~~,~~ *and broadband infrastructure,* but ~~no~~ excavations ~~must~~ *may not* be made for ~~such~~ *this* purpose without the permission of the council or its authorized officer.

(2) The streets and alleys must be placed in as good condition by the person or corporation making the excavation as they were before the excavation was

made and the mains laid down. In default ~~thereof~~ *of this*, the council may order the same to be done at the expense of ~~such~~ *the* person or corporation."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 154

[HB 173]

AN ACT REVISING LAWS RELATED TO VOTING SYSTEMS; REQUIRING MANUFACTURER CERTIFICATION; PROHIBITING MODEMS AND OTHER UNAUTHORIZED EXTERNAL COMMUNICATION DEVICES IN VOTING SYSTEMS; PROVIDING A PENALTY FOR TAMPERING WITH VOTING SYSTEMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-17-103 AND 13-35-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-17-103, MCA, is amended to read:

"**13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (3);

(g) is protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted; ~~and~~

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly*;*

*(m) is certified by the manufacturer to be free of any modems or other unauthorized external communication devices; and*

*(n) has been tested by a third-party tester before its first use to validate the manufacturer's certification required in subsection (1)(m).*

(2) A voter interface device may not be approved for use in this state unless:

(a) the device meets the electronic security standards adopted by the secretary of state;

(b) the device provides accessible voting technology for electors with hearing, vision, speech, or ambulatory impairments;

(c) the device meets all requirements specified in subsection (1);

(d) the device has been made available for demonstration and use by electors with disabilities in at least one public event held by the secretary of state; ~~and~~

(e) disabled electors have been able to participate in the process of determining whether the system meets accessibility standards*; and*

*(f) the device is certified by the manufacturer to be free of any modems or other unauthorized external communication devices*.

(3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.

*(4) (a) The secretary of state shall adopt rules implementing the provisions of subsection (1)(n) and defining approved third-party testers and the testing process for voting systems.*

*(b) A county that acquires the new voting system must cover the cost of the third-party test. A county may conduct additional third-party tests throughout the life of the voting system, and of the voting systems already in the county's possession and use, at the county's discretion and expense following the rules adopted by the secretary of state pursuant to subsection (4)(a).*"

**Section 2.** Section 13-35-205, MCA, is amended to read:

"**13-35-205. Tampering with election records and information.** A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination that has been filed;

(2) purposely causes a vote to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after it has been completed by the elector;

(5) adds a ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(6) causes a name to be placed on the registry lists other than in the manner provided by this title; ~~or~~

(7) changes a poll list or checklist*;*

*(8) installs a modem or other unauthorized external communication device in a voting system; or*

*(9) employs a modem or other unauthorized external communication device to transmit data to or from a voting system*."

**Section 3. Transition.** The secretary of state shall adopt rules pursuant to [section 1(4)] by January 1, 2024.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 155

[HB 172]

AN ACT ALLOWING BOARDS OF COUNTY COMMISSIONERS TO REQUEST A RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A NONFEDERAL ELECTION; ALLOWING BOARDS OF COUNTY COMMISSIONERS TO REQUEST THE ADDITION OF A COUNTYWIDE RACE TO THE RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A FEDERAL ELECTION; PROVIDING RULEMAKING

AUTHORITY; AMENDING SECTIONS 13-1-101, 13-17-503, AND 13-17-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Random-sample audit of vote-counting machines optional after nonfederal elections -- rulemaking authority.** (1) After unofficial results are available to the public in a nonfederal election, but before the official canvass by the county board of canvassers, the board of county commissioners may request a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) On or before May 1, 2024, the secretary of state shall adopt rules to implement the provisions of this section, including but not limited to rules for:

(a) the manner in which the random-sample audit of vote-counting machines will be conducted;

(b) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(c) the process to be used to select the ballots that are to be included in the random-sample audit.

**Section 2.** Section 13-1-101, MCA, is amended to read:

"**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) The term does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) meals and lodging provided by individuals in their private residences for a candidate or other individual;

(iii) the use of a person's real property for a fundraising reception or other political event; or

(iv) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Disability" means a temporary or permanent mental or physical impairment such as:

(a) impaired vision;

(b) impaired hearing;

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(d) impaired mental or physical functioning that makes it difficult for the person to participate in the process of voting.

(13) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(14) (a) "Election administrator" means, except as provided in subsection (14)(b), the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an election communication.

(16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(17) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an electioneering communication.

(18) "Elector" means an individual qualified to vote under state law.

(19) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in 13-37-220; or

(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) except as provided in subsection (19)(a)(ii), payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees;

(v) the use of a person's real property for a fundraising reception or other political event; or

(vi) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(20) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(21) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-1-104.

(22) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(23) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(24) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (24), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(25) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(26) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(27) "Individual" means a human being.

(28) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(29) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(30) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(31) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of $250 or less.

(e) A joint fundraising committee is not a political committee.

(33) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(34) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(35) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(36) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(38) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(39) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(40) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(41) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503 *and [section 1]*.

(42) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(44) "Religious organization" means a house of worship with the major purpose of supporting religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic documents of the organization must list a formal code of doctrine and discipline, and the organization must spend the majority of its money on religious activities such as regular religious services, educational preparation for its ministers, development and support of its ministers, membership development, outreach and support, and the production and distribution of religious literature developed by the organization.

(45) "School election" has the meaning provided in 20-1-101.

(46) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(47) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(48) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(49) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(50) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(51) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(52) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(53) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(54) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

(55) "Voter interface device" means a voting system that:

(a) is accessible to electors with disabilities;

(b) communicates voting instructions and ballot information to a voter;

(c) allows the voter to select and vote for candidates and issues and to verify and change selections; and

(d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

(56) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 3.** Section 13-17-503, MCA, is amended to read:

"**13-17-503. Random-sample audit of vote-counting machines required *after federal election* -- rulemaking authority.** (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and

(b) an election for:

(i) one statewide office race, if any;

(ii) one federal office race;

(iii) one legislative office race; ~~and~~

(iv) one statewide ballot issue if a statewide ballot issue was on the ballot~~.~~*; and*

*(v) one countywide race if requested by the board of county commissioners using the process in [section 1].*

(4) The audit may not include:

(a) a retention election for a judicial candidate; or

(b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

(a) the county does not use a vote-counting machine; or

(b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

(a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part."

**Section 4.** Section 13-17-505, MCA, is amended to read:

"**13-17-505. Selection process for random-sample audit *after federal election*.** (1) No sooner than 7 days after the *federal* election and no later than 9 days after the *federal* election, the state board of canvassers, pursuant to 13-17-503 and as established by rule, shall randomly select:

(a) the races and ballot issue to be audited;

(b) the precincts to be audited in each county; and

(c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to 13-17-507.

(2) The selection process must be open to the public.

(3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:

(a) notify each county election administrator of the selections; and

(b) make a list of the selections available electronically."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 17, part 5, and the provisions of Title 13, chapter 17, part 5, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 156

[HB 171]

AN ACT REVISING LAWS RELATED TO THE EDUCATION OF CHILDREN RECEIVING INPATIENT TREATMENT OF EMOTIONAL PROBLEMS; ADDING AND REVISING DEFINITIONS; INCLUDING THERAPEUTIC GROUP HOMES IN THE LIST OF FACILITIES QUALIFYING FOR STATE PAYMENTS; REVISING THE CALCULATION OF STATE FUNDING FOR THE EDUCATIONAL COSTS OF CHILDREN RECEIVING INPATIENT TREATMENT OF EMOTIONAL PROBLEMS; PROVIDING ADDITIONAL DUTIES FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTIONS

20-7-403, 20-7-419, 20-7-435, AND 20-7-436, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 20-7-403, MCA, is amended to read:

"**20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(13) contracting, pursuant to 20-7-435, for the provision of appropriate educational opportunity for a child ~~placed in an in-state residential treatment facility or children's psychiatric hospital~~ *receiving in-state inpatient treatment at a qualifying facility*, including the provision of a free appropriate public education for a child with a disability."

**Section 2.** Section 20-7-419, MCA, is amended to read:

"**20-7-419. Rules.** The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

(1) the calculation of tuition under 20-7-420;

(2) the calculation and distribution of funds under 20-7-435; and

(3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, *therapeutic group homes,* and public schools *pursuant to 20-7-435*"

**Section 3.** Section 20-7-435, MCA, is amended to read:

"**20-7-435. Funding of educational programs ~~at in-state children's psychiatric hospitals and in-state residential treatment programs~~ for eligible children *receiving in-state inpatient treatment of serious emotional disturbances.*** (1) ~~(a)~~ It is the intent of the legislature that eligible children ~~in in-state children's psychiatric hospitals and residential treatment facilities~~ *receiving inpatient treatment of a serious emotional disturbance at in-state qualifying facilities* be provided with an appropriate educational opportunity in a cost-effective manner. *The legislature further intends that in-state qualifying facilities prioritize treatment of Montana residents over residents of other states.*

~~(b) As used in this section, "appropriate educational opportunity" means:~~

~~(i) for an eligible child without a disability:~~

~~(A) if provided by a nonpublic school, an education program provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109; and~~

~~(B) if provided by a public school, an education program consistent with accreditation standards provided for in 20-7-111; and~~

~~(ii) for an eligible child with a disability, a free appropriate public education consistent with state standards for the provision of special education and related services.~~

(2) ~~From appropriations provided for the purposes of this section, the~~ *The* superintendent of public instruction may contract with ~~an in-state children's psychiatric hospital or residential treatment~~ *a qualifying* facility for provision of an educational program for an eligible child in the ~~hospital or treatment~~ *qualifying* facility. *The contract between the superintendent of public instruction and a qualifying facility must include a provision requiring the qualifying facility to provide educational data and regular reports about the academic status and academic progress being made by each eligible child at a qualifying facility.*

(3) (a) Whenever the superintendent of public instruction contracts with ~~an in-state children's psychiatric hospital or residential treatment~~ *a qualifying* facility for provision of an educational program for an eligible child ~~in the children's psychiatric hospital or residential treatment facility~~, the superintendent of public instruction shall establish a daily rate per eligible child for each ~~hospital or~~ *qualifying* facility that reflects actual documented costs of providing an appropriate educational opportunity at that ~~hospital or~~ facility and that excludes the cost of services that are eligible for reimbursement under any provision of state or federal law or an insurance policy ~~not to exceed 100% of the tuition per-ANB amount as defined in 20-5-323 divided by 180~~.

(b) For each eligible child *and from appropriations provided for the purposes of this section*, the superintendent of public instruction shall pay the ~~hospital or treatment~~ *qualifying* facility the daily rate under subsection (3)(a) *minus the amount paid under subsection (3)(c).*

(c) For each eligible child, the eligible child's school district of residence shall pay the ~~hospital or treatment~~ *qualifying* facility a daily rate of 40%

of the tuition per-ANB amount as defined in 20-5-323 divided by 180 in a manner prescribed by the superintendent of public instruction. The district of residence shall finance the tuition amount from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees.

(d) An eligible child whose appropriate educational opportunity is provided under subsection (5)(a) or (5)(b) ~~of this section~~ may not receive funding under this subsection (3).

*(e) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a request for funding this section based on the daily rate for each facility as determined under subsection (3)(a). If the money appropriated for the payments to qualifying facilities under this section is not sufficient, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the payments.*

(4) A supplemental education fee or tuition, beyond those authorized under this section, may not be charged for an eligible child who receives an education under contract with an in-state children's psychiatric hospital or residential treatment facility under subsection (3) or as provided under subsection (5).

(5) If ~~a children's psychiatric hospital or residential treatment~~ *a qualifying* facility fails to provide an appropriate educational opportunity for an eligible child at the ~~children's psychiatric hospital or residential treatment~~ facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall, from appropriations provided for the purposes of this section, choose either of the following two options:

(a) provide for an appropriate educational opportunity for the eligible child utilizing qualified specialists who are employees of the office of public instruction or under contract with the office of public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance the reimbursement from the levy authorized to support the district tuition fund.

(b) negotiate with the school district in which the ~~children's psychiatric hospital or residential treatment~~ *qualifying* facility is located for the supervision and implementation of an appropriate educational opportunity for eligible children attending the ~~children's psychiatric hospital or residential treatment~~ facility. The amount to be paid to the district of attendance by the office of public instruction and the amount to be paid by the eligible child's district of residence are determined as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d) and (1)(e).

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(7) The superintendent of public instruction may distribute funds appropriated for contracts with in-state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school districts for the purpose of supporting educational programs for children with significant behavioral or physical needs.

*(8) The superintendent of public instruction shall report to the education interim budget committee and the education interim committee in accordance with 5-11-210 no later than September 30 of even-numbered years on the implementation of this section and an analysis that supports each daily rate. The report must include:*

*(a) the daily rate calculated for each qualifying facility as described in subsection (3)(a); and*

*(b) an evaluation of education programs at qualifying facilities funded under this section.*"

**Section 4.** Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

*(1) "Appropriate educational opportunity" means:*

*(a) for an eligible child without a disability:*

*(i) if provided by a nonpublic school, an education program provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109; and*

*(ii) if provided by a public school, an education program consistent with accreditation standards provided for in 20-7-111; and*

*(b) for an eligible child with a disability, a free appropriate public education consistent with state standards for the provision of special education and related services.*

~~(1)~~*(2)* (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

~~(2)~~*(3)* "Eligible child" means a Montana resident child or youth who is less than 19 years of age *on September 10 of the school year* and who has ~~an emotional problem~~ *a serious emotional disturbance* that is so severe that the child or youth has been placed in ~~a children's psychiatric hospital or residential treatment~~ *a qualifying* facility for ~~inpatient~~ treatment ~~of emotional problems~~.

*(4) "Qualifying facility" means a children's psychiatric hospital, a residential treatment facility, or a therapeutic group home located in Montana.*

~~(3)~~*(5)* (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with *serious* emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections ~~(3)~~*(5)*(a)(iii) and ~~(3)~~*(5)*(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

*(6) "Therapeutic group home" means an in-state treatment facility providing therapeutic services licensed and under contract with the department of public health and human services as a youth care facility, as defined in 52-2-602.*"

**Section 5. Coordination instruction.** If House Bill No. 110 is not passed and approved, then the reference to the education interim budget committee in subsection (8) of 20-7-435 of [this act] must be changed to the legislative finance committee.

**Section 6. Effective date.** [This act] is effective July 1, 2023.

**Section 7. Applicability.** [This act] applies to school years and years of attendance beginning on or after July 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 157

[HB 156]

AN ACT GENERALLY REVISING LAWS UNDER THE SUPERVISION OF THE STATE AUDITOR; REVISING SECURITIES LAWS RELATING TO DISCLOSURE OF FINANCIAL EXPLOITATION OF AN OLDER PERSON; AUTHORIZING THE SECURITIES ASSISTANCE RESTITUTION FUND TO ASSERT CERTAIN CLAIMS FOR RESTITUTION; REVISING LAWS RELATING TO COMMISSIONER ACCESS TO INSURANCE RECORDS; REVISING INSURANCE LAWS TO REMOVE CERTAIN SERVICE OF PROCESS FEES; REVISING INSURANCE SERVICE OF PROCESS LAWS; REVISING INSURANCE CERTIFICATE OF AUTHORITY LAWS; REQUIRING THE COMMISSIONER TO MAKE AN APPROVED RISK LIST; REVISING THE PENALTY RELATING TO CERTAIN SURPLUS LINES FILINGS; DEFINING PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION; REVISING LAWS RELATING TO PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS; REVISING LAWS RELATING TO FILINGS OF POLICY FORMS; REVISING LAWS RELATING TO THE APPOINTMENT OF FOREIGN OR ALIEN SOCIETIES; REVISING LAWS RELATING TO THE BOARD OF DIRECTORS OF THE MONTANA LIFE AND HEALTH INSURANCE GUARANTEE ASSOCIATION BOARD; REVISING LAWS RELATING TO COMMERCIAL LINES POLICIES; REVISING LAWS RELATING TO THE FILING OF VARIABLE LIFE INSURANCE CONTRACTS; REVISING PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION LAWS; REVISING DEFINITIONS; REVISING LAWS RELATING TO THE MONTANA REINSURANCE ASSOCIATION ACT; DEFINING "TITLE GUARANTEE"; AUTHORIZING THE COMMISSIONER TO ORDER RESTITUTION RELATED TO TITLE INSURANCE; REVISING LAWS RELATING TO IN-NETWORK AND OUT-OF-NETWORK EMERGENCY SERVICES; REVISING LAWS RELATED TO UTILIZATION REVIEW ORGANIZATIONS; REVISING LAWS RELATED TO STANDARDS FOR PROPERTY AND CASUALTY INSURERS; PROVIDING FOR COVERAGE OF CERTAIN ORAL THERAPY PRESCRIPTIONS RELATED TO OPIOID USE DISORDERS; TRANSFERRING STATUTORY DUTIES FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE COMMISSIONER OF SECURITIES AND INSURANCE RELATING TO THE MANAGED CARE PLAN NETWORK ADEQUACY AND QUALITY

ASSURANCE ACT; AUTHORIZING THE COMMISSIONER TO TRANSFER EXISTING RULES RELATING TO THE ACT; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-31-114, 30-10-341, 30-10-1004, 33-1-408, 33-1-605, 33-1-1502, 33-2-116, 33-2-312, 33-2-2402, 33-2-2404, 33-4-509, 33-7-531, 33-10-204, 33-15-336, 33-17-1101, 33-20-606, 33-20-1304, 33-20-1316, 33-22-156, 33-22-170, 33-22-172, 33-22-173, 33-22-177, 33-22-1128, 33-22-1316, 33-23-310, 33-25-105, 33-25-301, 33-31-201, 33-32-215, 33-33-102, 33-33-201, 33-33-202, 33-36-102, 33-36-103, 33-36-105, 33-36-201, 33-36-203, 33-36-209, 33-36-210, 33-36-211, 33-36-212, 33-36-213, 33-36-301, 33-36-302, 33-36-303, 33-36-304, 33-36-305, AND 33-36-401, MCA; REPEALING SECTIONS 33-2-322, 33-7-123, AND 33-17-405, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-31-114, MCA, is amended to read:

"**15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105~~(15)~~.

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporate income tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the

purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered."

**Section 2.** Section 30-10-341, MCA, is amended to read:

"**30-10-341. Third-party disclosure -- immunity.** (1) ~~If a qualified individual, investment adviser, investment adviser representative, or salesperson reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual, investment adviser, investment adviser representative, or salesperson may notify any third party closely connected to the vulnerable person. Disclosure may not be made to a third party who is suspected of financial exploitation or other abuse of the vulnerable person~~ *A qualified individual, investment adviser, investment adviser representative, or salesperson who reasonably believes that the financial exploitation of a vulnerable person is occurring, has or may have occurred, is being attempted, or has been or may have been attempted:*

*(a) may notify:*

*(i) a federal, state, or local law enforcement agency;*

*(ii) the department of public health and human services provided for in 2-15-2201 or its local affiliate; or*

*(iii) the commissioner;*

*(b) may notify any third party reasonably associated with a vulnerable person. A third party reasonably associated with a vulnerable person includes but is not limited to the following:*

*(i) a parent, spouse, adult child, sibling, or other known family member or close associate of a vulnerable person;*

*(ii) an authorized contact provided by a vulnerable person to the qualified individual, investment adviser, investment adviser representative, or salesperson;*

*(iii) a co-owner, additional authorized signatory, or beneficiary of a vulnerable person's account; and*

*(iv) an attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected by a vulnerable person, a court, a government agency, or a third party to manage some or all of the financial affairs of the vulnerable person;*

*(c) may not notify any third party reasonably associated with a vulnerable person of suspected financial exploitation if the qualified individual, investment adviser, investment adviser representative or salesperson believes the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable person.*

(2) A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the disclosure."

**Section 3.** Section 30-10-1004, MCA, is amended to read:

"**30-10-1004. (Temporary) Creation of securities restitution assistance fund.** (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4) of this section.

(2) (a) The fund consists of amounts received by the commissioner from:

(i) persons who have violated any provision of parts 1 through 3 of this chapter;

(ii) persons who have voluntarily contributed to the fund; and

(iii) a portion of fees collected under 30-10-209(1)(b) as provided in 30-10-209(6)(b).

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under this chapter and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under this part.

*(5) Whenever a claimant is paid from the securities restitution assistance fund pursuant to this part, the securities restitution assistance fund is subrogated, to the extent of the payment to the claimant, to the rights of the claimant to any restitution ordered by the court beyond the amount that would make the claimant whole. The commissioner may, on behalf of the securities restitution assistance fund, file any document in a court of competent jurisdiction to enforce this right.* (Terminates June 30, 2027--secs. 3, 4, Ch. 404, L. 2021.)"

**Section 4.** Section 33-1-408, MCA, is amended to read:

"**33-1-408. Conduct of examinations -- records -- correction of accounts -- appraisals.** (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, an examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours ~~at its offices~~ to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined*, including but not limited to access at its offices*. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318 and 33-1-701.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The

cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate."

**Section 5.** Section 33-1-605, MCA, is amended to read:

"**33-1-605. Service of process -- foreign or alien insurer -- appointment of registered agent.** (1) A foreign or alien insurer that transacts any business in this state must have a registered agent upon whom any legal process, notice, or demand required or permitted by law to be served upon a company must be served. The agent must be a person who either resides or maintains a business address in this state.

(2) The written appointment of an agent must be provided to the commissioner in a form prescribed by the commissioner, and must, at minimum, include a consent to service of process and the official name and address of the agent and the insurer represented.

(3) The commissioner shall keep a record of the foreign and alien insurers transacting business in Montana and the name and address of their registered agents. This record must be made public in a readily accessible form prescribed by the commissioner.

(4) Service by certified mail to a registered agent listed for an insurer constitutes service of legal process upon that insurer.

(5) An insurer may revoke the appointment of an agent by filing with the commissioner a written appointment of another agent and a statement that the appointment of the former agent is revoked. The authority of the agent whose appointment has been revoked terminates 30 days after the notice is received by the commissioner.

(6) When a foreign or alien insurer ceases to do business in this state, the agent last designated by or acting for the insurer is deemed to continue as agent for it unless a new agent is appointed. Service by certified mail upon any such agent constitutes service of legal process upon the insurer.

~~(7) Each insurer shall include a fee of $10 with any initial appointment, change of agent appointment, or change of address. The fee is waived for an insurer filing an agent appointment with an original application for a certificate of authority or an annual renewal.~~

~~(8)~~*(7)* This section does not limit or affect the right to serve any process, notice, or demand upon an insurer in any other manner permitted by law.

~~(9)~~*(8)* When legal process is served pursuant to this section, the insurer must appear, answer, or plead within 30 days, exclusive of the date of mailing, after the date of the certified mailing or be subject to the laws of this state regarding default judgment.

~~(10)~~*(9)* For the purposes of this section:

(a) "certified mail" means a method of sending by common carrier with tracking capability; and

(b) "legal process" means a summons and complaint."

**Section 6.** Section 33-1-1502, MCA, is amended to read:

"**33-1-1502. Application of criminal law and procedure.** *(1)* Unless a rule or statute specifically states otherwise, the provisions of Titles 45 and 46 apply to the enforcement of the offenses provided for in this part.

*(2) In any prosecution for the offenses provided for and charged under this part, for the purposes of and in addition to the provisions of 46-2-101 and 46-3-110, offenses are deemed to have been committed in any of the following locations:*

*(a) the county or judicial district in which the purported loss, damage, or accident occurs;*

*(b) the county or judicial district in which the insurance policy provides coverage or, in the case of motor vehicle insurance, where the vehicle is garaged; or*

*(c) the county or judicial district in which money or other insurance proceeds were received for the fraudulent act.*"

**Section 7.** Section 33-2-116, MCA, is amended to read:

"**33-2-116. Issuance or refusal of certificate of authority -- state ownership of certificate.** (1) If upon completion of an insurer's application for a certificate of authority the commissioner finds that the insurer has met the requirements for a certificate of authority under this code, the commissioner shall issue to the insurer a proper certificate of authority. If the commissioner does not find that the insurer is entitled to a certificate of authority, the commissioner shall issue an order refusing to issue a certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, must specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration or termination of the certificate of authority, the insurer shall promptly ~~deliver~~ *destroy* the certificate ~~of authority to the commissioner~~."

**Section 8. Insurance presumed unobtainable from authorized insurers.** At least annually, the commissioner shall make available a list of the kinds of insurance that are presumed to be unobtainable from authorized insurers, known as the approved risk list.

**Section 9.** Section 33-2-312, MCA, is amended to read:

"**33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** (1) A surplus lines insurance producer or an insured that independently procured insurance that fails to file the tax and fee statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable for a penalty of *up to* $25 for each day of delinquency, commencing 30 calendar days after the due date established by the commissioner by rule. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction with the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the commissioner, forwarded to the state treasurer, and placed to the credit of the general fund. The surplus lines insurance producer's license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer or an insured that independently procured insurance does not pay the stamping fee provided for in 33-2-321, the

commissioner may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

**Section 10.** Section 33-2-2402, MCA, is amended to read:

"**33-2-2402. Definitions.** As used in this part, the following definitions apply:

(1) "Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include either or both of the following:

(a) receiving payments for pharmacist services; and

(b) making payments to pharmacists or pharmacies.

(2) "Enrollee" means a member, policyholder, subscriber, covered person, beneficiary, dependent, or other individual participating in a health benefit plan.

(3) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).

(4) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(5) (a) "Health carrier" means an entity that is subject to the insurance laws and regulations of this state or to the jurisdiction of the commissioner and that contracts or offers to contract or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(b) The term includes:

(i) self-funded multiple employer welfare arrangements as defined in 33-35-103; and

(ii) any other entity providing a plan of health insurance, health benefits, or health care services.

(6) "Manufacturer" has the meaning provided in 37-7-602.

(7) "Other prescription drug or device services" means services other than claims processing services that are provided directly or indirectly, whether in connection with or separate from claims processing services, including but not limited to:

(a) negotiating rebates, discounts, or other financial incentives and arrangements with manufacturers, wholesale distributors, or other third parties;

(b) disbursing or distributing rebates;

(c) managing or participating in incentive programs or arrangements for pharmacist services;

(d) negotiating or entering into contractual arrangements with pharmacists, pharmacies, or both;

(e) developing and maintaining formularies;

(f) designing prescription drug benefit programs;

(g) advertising or promoting services; or

(h) administering prior authorization, step therapy, case management, or other utilization review programs.

(8) "Pharmacist" has the meaning provided in 33-22-170.

(9) "Pharmacist services" means products, goods, and services or any combination of products, goods, and services provided as part of the practice of pharmacy.

(10) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7.

(11) (a) "Pharmacy benefit manager" means a person, including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager,

that provides claims processing services or other prescription drug or device services, or both, to:

(i) enrollees who are residents of this state, for health benefit plans; or

(ii) injured workers of workers' compensation insurance carriers.

(b) The term does not include:

(i) a health care facility as defined in 50-5-101 that is licensed in this state;

(ii) a health care professional licensed under Title 37;

(iii) a consultant who provides advice only as to the selection or performance of a pharmacy benefit manager; or

(iv) a health carrier or workers' compensation insurance carrier to the extent that the carrier performs any claims processing and other prescription drug or device services exclusively for its enrollees or injured workers.

*(12) "Pharmacy services administrative organization" means an entity that acts as a contracting agent or provides contracting and other administrative services to pharmacies to assist them in their interactions with third-party payers and pharmacy benefit managers.*

~~(12)~~*(13)* "Plan sponsor" has the meaning provided in 33-10-202.

~~(13)~~*(14)* (a) "Rebates" means all price concessions, however characterized, paid by a manufacturer to a pharmacy benefit manager, including discounts and other remuneration or price concessions, that are based on the actual or estimated utilization of a prescription drug.

(b) The term includes price concessions based on the effectiveness of a prescription drug as in a value-based or performance-based contract.

~~(14)~~*(15)* "Wholesale acquisition cost" has the meaning provided in 42 U.S.C. 1395w-3a.

~~(15)~~*(16)* "Wholesale distributor" or "distributor" has the meaning provided in 37-7-602.

~~(16)~~*(17)* "Workers' compensation insurance carrier" means:

(a) an insurance company transacting business under compensation plan No. 2; or

(b) the state fund compensation plan No. 3 under Title 39, chapter 71."

**Section 11.** Section 33-2-2404, MCA, is amended to read:

"**33-2-2404. Pharmacy benefit manager prohibited practices.** (1) In any participation contracts between a pharmacy benefit manager and pharmacies, ~~or~~ pharmacists*, or pharmacy services administrative organizations* ~~providing prescription drug coverage~~, a pharmacy or pharmacist may not be prohibited, restricted, or penalized in any way from disclosing to any enrollee or injured worker any information the pharmacy or pharmacist considers appropriate regarding:

(a) the decision of utilization reviewers or similar persons to authorize or deny drug coverage or benefits; and

(b) the process that is used to authorize or deny drug coverage or benefits.

(2) (a) A pharmacy benefit manager contract with a participating pharmacy, ~~or~~ pharmacist*, or a pharmacy services administrative organization* in this state may not prohibit, restrict, or limit disclosure of information to the commissioner when the commissioner is investigating or examining a complaint or conducting a review of a pharmacy benefit manager's compliance with the requirements of this part.

(b) A pharmacy benefit manager may not terminate the contract of or penalize a pharmacy, ~~or~~ pharmacist*, or a pharmacy services administrative organization* for sharing any portion of the pharmacy benefit manager contract with the commissioner for investigation of a complaint or a question regarding whether the contract complies with this part.

(c) Any examination or review under this section must follow the examination procedures and requirements applicable to insurers under Title 33, chapter 1, part 4, including but not limited to the confidentiality provisions of 33-1-409."

**Section 12.** Section 33-4-509, MCA, is amended to read:

"**33-4-509. Application and policy forms filed with commissioner.** All forms of application for insurance and of policies proposed to be used by an insurer must be filed with *and approved by* the commissioner *prior to the issuance, delivery, or use in this state* ~~at least 30 days in advance of any use~~. The commissioner shall disapprove any form found by the commissioner to be unlawful, illegible, or misleading. An insurer may not use any form after it has received the commissioner's notice of disapproval setting forth the reasons for disapproval."

**Section 13. Service of process.** Service of process against a society authorized to do business in this state must be made pursuant to 35-7-113 or in any other manner permitted by law.

**Section 14.** Section 33-7-531, MCA, is amended to read:

"**33-7-531. Foreign or alien society -- admission.** (1) A foreign or alien society may not transact business in this state without a license issued by the commissioner of insurance. A foreign or alien society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) a certified copy of its articles of incorporation;

(b) a copy of its bylaws, certified by its secretary or corresponding officer;

~~(c) a written appointment of the commissioner to be the society's agent, as prescribed in 33-7-123;~~

~~(d)~~*(c)* a statement of its business, under oath of its president and secretary or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, district, territory, province, or country satisfactory to the commissioner of this state;

~~(e)~~*(d)* certification from the proper official of its home state, district, territory, province, or country that the society is legally incorporated and licensed to transact business in that jurisdiction;

~~(f)~~*(e)* copies of its certificate forms; and

~~(g)~~*(f)* other information the commissioner considers necessary.

(2) A foreign or alien society applying for authority to transact business in this state must have the qualifications required of domestic societies organized under this chapter."

**Section 15.** Section 33-10-204, MCA, is amended to read:

"**33-10-204. Board of directors -- commissioner approval -- compensation.** (1) The board of directors of the association consists of *not less than* seven *or more than nine* members serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board may not otherwise be compensated by the association

for their services. However, any designated representatives of members of the board who are not full-time employees of the member insurers that designated them may receive reasonable compensation for their services on the board of directors upon annual approval by the members of the association."

**Section 16.** Section 33-15-336, MCA, is amended to read:

"**33-15-336. Applicability.** (1) Other statutes of this state setting simplification standards for language or format do not apply to property and casualty policies.

(2) Sections 33-15-333 through 33-15-340 do not apply to policies in manuscript form or to the following kinds of insurance:

(a) ocean marine;

(b) surety and financial institution bonds;

(c) reinsurance; *or*

(d) ~~commercial aviation~~ *commercial lines policies, including but not limited to commercial aviation*~~; or~~

~~(e) large commercial risks whose aggregate annual premiums for insurance on all risks totals at least $100,000~~.

(3) A non-English policy is considered in compliance with 33-15-337 if it was translated from an English policy that complies with 33-15-337."

**Section 17. Service of process.** Service of process against a nonresident person must be made pursuant to 35-7-113 or in any other manner permitted by law.

**Section 18.** Section 33-17-1101, MCA, is amended to read:

"**33-17-1101. Place of business -- display of license -- records.** (1) A resident insurance producer shall maintain a place or places of business in this state accessible to the public. A nonresident insurance producer may maintain a place or places of business in this state. An insurance producer's place or places of business must be a place in which transactions are conducted under the insurance producer's license. The address of the primary place of business must appear on the license. This section does not prohibit the maintenance of a place of business in a licensee's place of residence.

(2) The license or, if the insurance producer has more than one place of business, a copy of the license must be conspicuously displayed in a part of the place of business customarily open to the public.

*(3) On request, resident and nonresident insurance producers are required to identify themselves and provide their license number to persons with whom they sell, solicit, or negotiate insurance.*

~~(3)~~*(4)* The insurance producer shall keep at a place of business complete records pertaining to transactions under the license for a period of at least 3 years after completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

**Section 19.** Section 33-20-606, MCA, is amended to read:

"**33-20-606. Variable contracts to meet insurance contract requirements.** (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-110, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract.

Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to that contract.

(3) ~~An insurer shall file with the commissioner a copy of a~~ *A* final prospectus~~,~~ *must be* dated and effective~~,~~ before ~~it~~ *an insurer* issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state. *The prospectus must be made available to the commissioner on request.*

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees."

**Section 20.** Section 33-20-1304, MCA, is amended to read:

"**33-20-1304. Issuance of license.** (1) The commissioner may issue a license to the applicant if the commissioner determines that the applicant:

(a) has satisfied all of the requirements for the license for which an application is made;

(b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license under this part; and

(c) is financially responsible and has a good business reputation.

~~(2) The commissioner may issue a license to a nonresident applicant only if the nonresident applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the commissioner is of the same legal force and validity as if served upon the applicant and that the authority will continue in force as long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the commissioner issues the license to the applicant.~~

~~(3)~~*(2)* If the commissioner denies an application, the commissioner shall inform the applicant and state the grounds for the denial.

~~(4)~~*(3)* An individual may act as a viatical settlement provider or viatical settlement broker under the authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual holds a license as a viatical settlement provider if:

(a) the individual is a member or employee of the firm or is an employee, officer, or director of the corporation; and

(b) the individual is designated by the firm or corporation on its license application or on a form that amends or supplements the application as being authorized to act as a viatical settlement provider under the authority of the license."

**Section 21.** Section 33-20-1316, MCA, is amended to read:

"**33-20-1316. Service of process.** (1) For viatical settlement providers, the provisions of Title 33, chapter 1, part 6, apply.

(2) For viatical settlement brokers, ~~the provisions of 33-17-405 apply~~ *service of process must be made pursuant to 35-7-113 or in any other manner permitted by law*."

**Section 22.** Section 33-22-156, MCA, is amended to read:

"**33-22-156. Health insurance rates -- filing required -- use.** (1) Each health insurance issuer that issues, delivers, or renews individual or small employer group health insurance coverage in the individual or small employer group market shall, at least 60 days before the rate goes into effect, file with the commissioner its rates, fees, dues, and other charges for each product form intended for use in Montana, together with sufficient information to support the premium to be charged as described in 33-22-156 through 33-22-159.

This filing may be made simultaneously with a notice of premium increase to policyholders and certificate holders required by 33-22-107.

(2) A health insurance issuer may submit a single combined justification for rate increases subject to review affecting multiple products if the claims experience of all products has been aggregated to calculate the rate increases and the rate increases are the same for all products. Rate increases are determined by combining the total amount of increases taken on a single product form or market segment, if the rate increase is the same for all products, over a 12-month period. A market segment means the individual or small group market.

(3) The commissioner may waive the 60-day filing requirement under subsection (1) if the rate increase is implemented pursuant to 33-22-107(1)(b). However, the rates and justifications for the rate increase still must be filed.

(4) The health insurance issuer shall submit a new filing to reflect any material change to the previous rate filing. For all other changes, the insurer shall submit an amendment to a previous rate filing. The insurer may file an actuarial trend to phase in rate increases over a 12-month period. The insurer may file amendments to that trend within the 12-month period.

(5) The filing of rates for health plans must include:

(a) the product form number or numbers and approval date of the product form or forms to which the rate applies;

(b) a statement of actuarial justification; and

(c) information sufficient to support the rate as described in 33-22-157.

(6) The commissioner shall prescribe the form and content of the information required under this section.

(7) A rate filing required under this section must be submitted by a qualified actuary representing the health insurance issuer. The qualified actuary shall certify in a form prescribed by the commissioner that, to the best of the actuary's knowledge and belief, the rates are not excessive, inadequate, unjustified, or unfairly discriminatory, as described in 33-22-157, and comply with the applicable provisions of Title 33 and rules adopted pursuant to Title 33.

(8) The rate filing must be delivered by the national association of insurance commissioners' system for electronic rate and form filing.

(9) ~~An~~ *Subject to 33-22-157(4), an* insurer may use a rate filing under this section 60 days after the date of filing with the commissioner ~~unless the health insurance issuer fails to provide the minimum documentation required in 33-22-157~~.

(10) Sections 33-22-156 through 33-22-159 do not apply to coverage consisting solely of excepted benefits as defined in 33-22-140."

**Section 23.** Section 33-22-170, MCA, is amended to read:

"**33-22-170. Definitions.** As used in 33-22-170 through 33-22-177 and 33-22-180, the following definitions apply:

(1) "Contract pharmacy" means a pharmacy operating under contract with a federally certified health entity to provide dispensing services to the federally certified health entity.

(2) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).

(3) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(4) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(5) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.

(6) "Pharmacy benefit manager" means a person who contracts with pharmacies on behalf of a health insurance issuer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, pay pharmacies or pharmacists for prescription drugs, or provide other prescription drug or device services.

(7) "Pharmacy performance measurement entity" means:

(a) the electronic quality improvement platform for plans and pharmacies; or

(b) an entity approved by the board of pharmacy provided for in 2-15-1733 as a nationally recognized and unbiased entity that assists pharmacies in improving performance measures.

*(8) "Pharmacy services administrative organization" means an entity that acts as a contracting agent or provides contracting and other administrative services to pharmacies to assist them in their interactions with third-party payers and pharmacy benefit managers.*

~~(8)~~*(9)* "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

~~(9)~~*(10)* "Prescription drug order" has the meaning provided in 37-7-101.

~~(10)~~*(11)* "Reference pricing" means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist."

**Section 24.** Section 33-22-172, MCA, is amended to read:

"**33-22-172. Maximum allowable cost or reference price list -- price formulation, updating, and disclosure -- exceptions.** (1) At the time of entering into a contract with a pharmacy *or a pharmacy services administrative organization* and subsequently upon request, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall provide the pharmacy *or pharmacy services administrative organization* with the sources used to determine the pricing for the maximum allowable cost list or the reference used for reference pricing.

(2) If using a maximum allowable cost list, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update the price information for each drug on the maximum allowable cost list at least once every 10 calendar days to reflect any modification of pricing;

(b) establish a process for eliminating products from the maximum allowable cost list or modifying the prices in the maximum allowable cost list in a timely manner to remain consistent with pricing changes and product availability in the marketplace; and

(c) provide a process for each pharmacy to readily access the maximum allowable cost list specific to the pharmacy in a searchable and usable format.

(3) If using reference pricing, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update no less than every 10 business days the price information for each drug, product, supply, or service for which reference pricing is used; and

(b) provide a process for each pharmacy to readily access the reference pricing specific to the plan sponsor or the health insurance issuer's plan.

(4) A plan sponsor, health insurance issuer, or pharmacy benefit manager may not:

(a) prohibit a pharmacist from discussing reimbursement criteria with a covered person;

(b) penalize a pharmacy or a pharmacist for disclosing the information described in subsection (4)(a) to a covered person or for selling a more affordable alternative to a covered person; or

(c) require a pharmacy to charge or collect a copayment from a covered person that exceeds the total charges submitted by the network pharmacy."

**Section 25.** Section 33-22-173, MCA, is amended to read:

"**33-22-173. Maximum allowable cost -- appeals process.** (1) In contracting with a pharmacy, *a pharmacy services administrative organization,* a plan sponsor or pharmacy benefit manager shall:

(a) provide a procedure by which a pharmacy *or a pharmacy services administrative organization* may appeal the price of a drug or drugs on the maximum allowable cost list;

(b) provide a telephone number at which a network pharmacy may contact the pharmacy benefit manager to discuss the status of the pharmacy's appeal; and

(c) respond to an appeal no later than 10 calendar days after the date the appeal is made.

(2) If the final determination is a denial of the pharmacy's *or the pharmacy services administrative organization's* appeal, the pharmacy benefit manager shall state the reason for the denial and provide the national drug code of an equivalent drug that is available for purchase by pharmacies in this state from national or regional wholesalers at a price that is equal to or less than the maximum allowable cost for that drug.

(3) If a pharmacy's *or a pharmacy services administrative organization's* appeal is determined to be valid by the pharmacy benefit manager, the pharmacy benefit manager shall:

(a) make an adjustment in the drug price effective on the date the appeal is resolved;

(b) make the adjustment applicable to all similarly situated network pharmacy providers as determined by the plan sponsor or the pharmacy benefit manager, as appropriate; and

(c) permit the appealing pharmacy to reverse and rebill the claim in question, using the dates of the original claim or claims.

(4) A pharmacy benefit manager shall make price adjustments to all similarly situated pharmacies within 3 days.

(5) A pharmacy *or a pharmacy services administrative organization* shall file its appeal within 10 calendar days ~~of its submission of the initial claim for reimbursement~~ *from the time of denial by the pharmacy benefit manager*."

**Section 26.** Section 33-22-177, MCA, is amended to read:

"**33-22-177. Rights of pharmacies.** (1) A pharmacy benefit manager or third-party payer may not prohibit a pharmacist or pharmacy from:

(a) participating in a class-action lawsuit;

(b) disclosing to the plan sponsor or to the patient information regarding the adjudicated reimbursement paid to the pharmacy if the pharmacist or pharmacy complies with the requirements of the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. 1181 et seq.;

(c) providing relevant information to a patient about the patient's prescription drug order, including but not limited to the cost and clinical efficacy of a more affordable alternative drug if one is available;

(d) mailing or delivering a prescription drug to a patient as an ancillary service of a pharmacy if the practice is not prohibited under Title 37, chapter 7; or

(e) charging a shipping and handling fee to a patient who has asked that a prescription drug be mailed or delivered if the practice is not prohibited under Title 37, chapter 7.

(2) A pharmacy benefit manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.

(3) A pharmacist or pharmacy that belongs to a pharmacy services administrative organization may receive a copy of a contract the pharmacy services administrative organization entered into with a pharmacy benefit manager or third-party payer on the pharmacy's or pharmacist's behalf.

(4) A pharmacy benefit manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefit manager or third-party payer to enable the pharmacy to make an informed contracting decision.

(5) (a) A pharmacy benefit manager shall:

(i) offer a pharmacy *or a pharmacy services administrative organization* an opportunity to renew an existing contract every 3 years, at a minimum; and

(ii) allow a pharmacy *or a pharmacy services administrative organization* to terminate a contract upon a 90-day notice to the pharmacy benefit manager.

(b) An addendum or amendment to an existing contract between a pharmacy benefit manager and a pharmacy *or a pharmacy services administrative organization* is effective only upon signing of the addendum or amendment by both parties.

(6) A pharmacy *or a pharmacy services administrative organization* has a private right of action to enforce provisions of 33-22-175 through 33-22-177."

**Section 27.** Section 33-22-1128, MCA, is amended to read:

"**33-22-1128. Insurance producer training requirements.** (1) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for disability or life insurance, has completed a one-time training course ~~on or before July 1, 2008~~, and completes ongoing training within every 24-month period ~~following July 1, 2008~~.

(2) The training requirements of this section may be approved as continuing education courses under Title 33, chapter 17, part 12.

(3) The one-time training course required by this section may not be less than 8 hours, and the ongoing training required by this section may not be less than 4 hours for each 24-month period.

(4) (a) The training must consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term care insurance partnership programs.

(b) The training must address but is not limited to:

(i) state and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(ii) available long-term care services and providers;

(iii) changes or improvements in long-term care services or providers;

(iv) alternatives to the purchase of private long-term care insurance;

(v) the effect of inflation on benefits and the importance of inflation protection; and

(vi) consumer suitability standards and guidelines.

(5) The training required by this section may not include training that is specific to the insurer or a company product or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(6) (a) An insurer subject to this section shall obtain verification that an insurance producer acting on the insurer's behalf receives the training required by this section before the insurance producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products.

(b) The insurer shall maintain records subject to this state's record retention requirements and make the verification of the insurance producer's compliance with training requirements available to the commissioner upon request.

(7) (a) An insurer subject to this section shall maintain records with respect to the training of its insurance producers concerning the distribution of its policies that will allow the commissioner to provide assurance to the department of public health and human services that insurance producers have received the required training and that the insurance producers have demonstrated an understanding of the insurer's policies and the relationship of the policies to public and private coverage of long-term care, including medicaid, in this state.

(b) The records must be maintained in accordance with this state's record retention requirements and must be made available to the commissioner upon request.

(8) The satisfaction of the training requirements required by this section in any state must be considered to satisfy the training requirements in this state."

**Section 28.** Section 33-22-1316, MCA, is amended to read:

"**33-22-1316. Administration of reinsurance payments.** (1) Claims that are incurred during a benefit year and are submitted for reimbursement in the following benefit year by the date established ~~by the board~~ *by the board* in the plan of operation will be allocated to the benefit year in which they are incurred. ~~Claims submitted after the date established by the board following the benefit year in which they were incurred will be allocated to the next benefit year in accordance with the board's operating rules, policies, and procedures~~ *Any claims from the preceding benefit year not submitted for reimbursement by the date established in the plan of operation may not be reimbursed.*

(2) If funds accumulated in the reinsurance program account in the state special revenue fund with respect to a benefit year are expected to be insufficient to pay all program expenses, claims for reimbursement, and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit year must be reduced proportionately to the extent necessary to prevent a deficiency in the funds for that benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims that are allocated to that benefit year without regard to when those claims were submitted for reimbursement, and any reduction must be applied to each claim in the same proportion.

(3) If funds accumulated in the reinsurance program account in the state special revenue fund exceed the actual claims for reimbursement and program expenses of the association in a given benefit year, the ~~board~~ *board* shall use ~~such~~ *the* excess funds to pay reinsurance claims in successive benefit years ~~and may recommend to the commissioner a reduction in the assessment amount for~~

~~the following year~~ *and may recommend to the commissioner a reduction in the assessment amount for the following year*.

(4) For each applicable benefit year, the ~~board~~ *board* shall notify eligible health insurers of reinsurance payments to be made for the applicable benefit year by the date established ~~by the board~~ in the plan of operation in the year following the applicable benefit year.

(5) By December 31 of the year following the applicable benefit year, the ~~board~~ *board* shall disburse all applicable reinsurance payments payable to an eligible health insurer."

**Section 29.** Section 33-23-310, MCA, is amended to read:

"**33-23-310. Medical malpractice insurance report by insurer.** (1) ~~Each~~ *If requested in writing by the commissioner, each* insurer engaged in issuing medical malpractice professional liability insurance in this state shall*, within 60 days, provide a report to the commissioner containing the following categories of information, as directed by the commissioner, for one or more professions provided in subsection (2)(b)* ~~include the following, by profession and based upon the insurer's experience in this state, in its annual statement to the commissioner of insurance~~:

(a) the number of medical malpractice insureds as of December 31 of the preceding calendar year;

(b) the amount of direct premiums written and direct premiums paid for medical malpractice insurance during the preceding calendar year;

(c) the number of medical malpractice claims made against its insureds during the preceding calendar year;

(d) the number of medical malpractice claims that were closed and that had a direct loss paid during the preceding calendar year, together with the total amount of direct losses paid for all closed claims for that year;

(e) the number of medical malpractice claims that were still open and had no direct losses paid as of December 31 of the preceding calendar year;

(f) the number of claims filed against its insureds in state and federal courts during the preceding calendar year, including the number of claims that were closed:

(i) without settlement during the preceding calendar year;

(ii) with a settlement during the preceding calendar year and the total amount paid for those claims;

(iii) during the preceding calendar year and that went to trial and the number that resulted in a judgment or verdict for the plaintiff, the number that resulted in a judgment or verdict for the insured, and the number that resulted in some other judgment or verdict;

(g) the total direct losses paid for claims against its medical malpractice insureds that went to trial and were closed during the preceding year; and

(h) other information and statistics that the commissioner of insurance requires.

(2) For purposes of this section:

(a) "insurer" has the meaning provided in 33-1-201; and

(b) "profession" includes the categories of physician, osteopath, podiatrist, dentist, optometrist, registered nurse, licensed practical nurse, or health care facility as defined in 50-5-101."

**Section 30.** Section 33-25-105, MCA, is amended to read:

"**33-25-105. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments,

or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title insurance producer for a title insurance policy, but does not include a title insurance producer.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in the title insurer or title insurance producer.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property; or

(c) acting as broker, insurance producer, or representative of a person described in subsection (8)(a) or (8)(b).

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

*(11) "Title guarantee" means a contract by which, subject to its stated terms and conditions, a title insurer guarantees the assured against loss sustained*

*by reason of the incorrectness of assurances set forth in the title guarantee with respect to the stated property. The term includes a trustee's sale guarantee, litigation guarantee, lot book guarantee, subdivision guarantee, recorded documents guarantee, or other form of guarantee filed with and approved by the commissioner.*

~~(11)~~*(12)* "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title insurance producer, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections ~~(11)(a) through (11)(c)~~*(12)(a) through (12)(c)* in a manner designed to evade the provisions of this title.

~~(12)~~*(13)* "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

~~(13)~~*(14)* (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.

~~(14)~~*(15)* "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 so authorized.

~~(15)~~*(16)* "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined."

**Section 31.** Section 33-25-301, MCA, is amended to read:

"**33-25-301. Refusal, suspension, or revocation of title insurance producer's license.** (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license an applicant or renew the license of a person as a title insurance producer or may suspend or revoke a title insurance

producer's license or may fine a title insurance producer or applicant, after notice and opportunity for a hearing, if the commissioner finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title insurance producer license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in conducting affairs as a title insurance producer, used coercive practices or demonstrated financial irresponsibility;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

*(3) The commissioner may issue an order requiring restitution to injured parties and reimbursement of the commissioner's reasonable costs of bringing an administrative action pursuant to this section.*

~~(3)~~*(4)* The commissioner may refuse, suspend, or revoke the license of a person licensed as a title insurance producer for the actions described in subsection (1) committed by any individual designated in the license."

**Section 32.** Section 33-31-201, MCA, is amended to read:

"**33-31-201. Establishment of health maintenance organizations.** (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first registers with the secretary of state to transact business in this state as a foreign corporation under 35-14-1502.

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all

amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

~~(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;~~

~~(ix)~~*(viii)* a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

~~(x)~~*(ix)* a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

~~(xi)~~*(x)* a description of the complaint procedures to be used as required under 33-31-303;

~~(xii)~~*(xi)* a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

~~(xiii)~~*(xii)* a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection *(2)(d)(xii)* does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

~~(xiv)~~*(xiii)* a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

~~(xv)~~*(xiv)* a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

~~(xvi)~~*(xv)* evidence that it can meet the requirement of 33-31-216(10); and

~~(xvii)~~*(xvi)* any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

**Section 33.** Section 33-32-215, MCA, is amended to read:

"**33-32-215. Emergency services.** (1) When conducting a utilization review or making a benefit determination for emergency services, a health insurance issuer that provides benefits for services in an emergency department of a hospital shall follow the provisions of this section.

(2) A health insurance issuer shall cover emergency services that screen and stabilize a covered person:

(a) without the need for prior authorization of the emergency services if a prudent lay person would have reasonably believed that an emergency medical condition existed even if the emergency services are provided on an out-of-network basis;

(b) without regard to whether the health care provider furnishing the services is a participating provider with respect to the emergency services;

(c) if the emergency services are provided out-of-network, without imposing any administrative requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply to emergency services received from network providers;

(d) if the emergency services are provided out-of-network, by complying with the cost-sharing requirements in subsection (4); and

(e) without regard to any other term or condition of coverage, other than:

(i) the exclusion of or coordination of benefits;

(ii) an affiliation or waiting period as permitted under 42 U.S.C. 300gg-19a; or

(iii) cost-sharing, as provided in subsection (4)(a) ~~or (4)(b), as applicable~~.

(3) For in-network emergency services, coverage of emergency services is subject to applicable copayments, coinsurance, and deductibles.

(4) (a) ~~Except as provided in subsection (4)(b), for out-of-network emergency services, any cost-sharing requirement imposed with respect to a covered person may not exceed the cost-sharing requirement for a covered person if the services were provided in-network~~ *Only in-network cost sharing amounts may be imposed on out-of-network emergency services.*

~~(b) A covered person may be required to pay, in addition to the in-network cost-sharing expenses, the excess amount the out-of-network provider charges that exceeds the amount the health insurance issuer is required to pay under this subsection (4).~~

~~(c)~~*(b)* A health insurance issuer complies with the requirements of this section by paying for emergency services provided by an out-of-network provider in an amount not less than the greatest of the following and taking into account exceptions in subsections ~~(4)(d)~~ *(4)(c)* and ~~(4)(e)~~ *(4)(d)*:

(i) the amount negotiated with in-network providers for emergency services, excluding any in-network cost-sharing imposed with respect to the covered person;

(ii) the amount of the emergency service calculated using the same method the plan uses to determine payments for out-of-network services but using the in-network cost-sharing provisions instead of the out-of-network cost-sharing provisions; or

(iii) the amount that would be paid under medicare for the emergency services, excluding any in-network cost-sharing requirements.

~~(d)~~*(c)* For capitated or other health plans that do not have a negotiated charge for each service for in-network providers, subsection ~~(4)(c)(i)~~ *(4)(b)(i)* does not apply.

~~(e)~~*(d)* If a health plan has more than one negotiated amount for in-network providers for a particular emergency service, the amount in subsection ~~(4)(c)(i)~~ *(4)(b)(i)* is the median of those negotiated amounts.

~~(5) Only in-network cost-sharing amounts may be imposed on out-of-network emergency services.~~

~~(6)~~*(5)* A health insurance issuer shall allow a covered person, the person's authorized representative, and the person's health care provider at least 24 hours following an emergency admission or the provision of emergency services to notify the health insurance issuer of the admission or provision of emergency services. If the admission or the emergency services occur on a holiday or weekend, a health insurance issuer shall allow notification no later than by the next business day following the admission or provision of emergency services.

~~(7)~~*(6)* If prior authorization is required for a postevaluation or poststabilization services review, a health insurance issuer shall provide access to a designated representative 24 hours a day, 7 days a week, to facilitate the review.

~~(8) A health insurance issuer may not impose prior authorization or step therapy requirements for an oral therapy prescription used to treat opioid use disorder.~~"

**Section 34.** Section 33-33-102, MCA, is amended to read:

"**33-33-102. Scope -- rulemaking.** (1) This chapter applies to property and casualty insurers seeking utilization review opinions and to utilization review organizations that provide opinions with respect to property and casualty insurance contracts issued in this state.

(2) The commissioner may adopt rules to implement the provisions of this chapter, including but not limited to ~~registration procedures and~~ medical privacy requirements."

**Section 35.** Section 33-33-201, MCA, is amended to read:

"**33-33-201. Standards for utilization review organizations.** (1) A utilization review organization that conducts utilization reviews in this state for property and casualty insurers shall *meet the standards set forth in this part* ~~register with the commissioner prior to performing utilization reviews. The commissioner shall place a utilization review organization on the register when the utilization review organization provides information that establishes that the utilization review organization meets the standards set forth in this section. The commissioner shall remove from the register a utilization review organization that fails to meet the standards set forth in this section~~.

(2) Utilization review organizations may use only licensed or certified health care professionals to conduct utilization reviews.

(3) Utilization reviews must be conducted by health care professionals who are licensed or certified in the same specialty as the provider whose treatment is being received by the insured or by a health care professional who is qualified to render the treatment being reviewed.

(4) Utilization review organizations shall comply with all applicable state or federal medical privacy laws.

(5) Utilization review evaluations must use generally accepted standards for treatment of the illness, injury, or condition that is being reviewed.

(6) Utilization review opinions must be signed by the health care professional performing the review.

(7) A utilization review organization may not base its fees or charges on any recommendation for a reduction in payment under an insurance contract or on a percentage of claim savings."

**Section 36.** Section 33-33-202, MCA, is amended to read:

"**33-33-202. Standards for property and casualty insurers.**

(1) Property or casualty insurers seeking utilization reviews with respect to insurance contracts issued in this state may use only utilization review organizations that ~~are registered under 33-33-201~~ *meet the requirements of this part and any rules adopted pursuant to this part.*

*(2) A property or casualty insurer is responsible for:*

*(a) monitoring all utilization review activities carried out by or on behalf of the property or casualty insurer;*

*(b) ensuring that all requirements of this part and rules adopted pursuant to this part are met; and*

*(c) ensuring that appropriate personnel have operational responsibility for and oversight of the performance of the property or casualty insurer's utilization review program and contracts with utilization review organizations.*

~~(2)~~*(3)* A property or casualty insurer that denies, in whole or in part, a policyholder's claim after consideration of a utilization review shall provide the policyholder an opportunity to request reconsideration by the insurer and the opportunity to submit additional information relating to the claim."

**Section 37. Coverage of oral therapy -- opioid use disorder.** A health insurance issuer may not impose prior authorization or step therapy requirements for an oral therapy prescription used to treat opioid use disorder.

**Section 38.** Section 33-36-102, MCA, is amended to read:

"**33-36-102. Purpose.** The purpose and intent of this chapter are to:

(1) establish standards for the creation and maintenance of networks by health carriers offering managed care plans and to ensure the adequacy, accessibility, and quality of health care services offered under a managed care plan by establishing requirements for written agreements between health carriers offering managed care plans and participating providers regarding the standards, terms, and provisions under which the participating provider will provide services to covered persons;

(2) provide for the implementation of state network adequacy and quality assurance standards in administrative rules, provide for monitoring compliance with those standards, and provide a mechanism for detecting and reporting violations of those standards to the commissioner;

(3) establish minimum criteria for the quality assessment activities of a health carrier issuing a closed plan or a combination plan and to require that minimum state quality assessment criteria be adopted by rule;

(4) enable health carriers to evaluate, maintain, and improve the quality of health care services provided to covered persons; and

(5) provide a streamlined and simplified process by which managed care network adequacy and quality assurance programs may be monitored for compliance through ~~coordinated~~ efforts ~~of~~ *by* the commissioner ~~and the department~~. It is not the purpose or intent of this chapter to apply quality assurance standards applicable to medicaid or medicare to managed care plans regulated pursuant to this chapter or to create or require the creation of quality assurance programs that are as comprehensive as quality assurance programs applicable to medicaid or medicare."

**Section 39.** Section 33-36-103, MCA, is amended to read:

"**33-36-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

~~(5) "Department" means the department of public health and human services established in 2-15-2201.~~

~~(6)~~*(5)* "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

~~(7)~~*(6)* "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

~~(8)~~*(7)* "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an outpatient center for surgical services, a treatment center, a skilled nursing center, a residential treatment center, a diagnostic laboratory, a diagnostic imaging center, or a rehabilitation or other therapeutic health setting.

~~(9)~~*(8)* "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

~~(10)~~*(9)* "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

~~(11)~~*(10)* "Health care provider" or "provider" means a health care professional or a facility.

~~(12)~~*(11)* "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

~~(13)~~*(12)* "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

~~(14)~~*(13)* "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

~~(15)~~*(14)* "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

~~(16)~~*(15)* "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

~~(17)~~*(16)* "Network" means the group of participating providers that provides health care services to a managed care plan.

~~(18)~~*(17)* "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

~~(19)~~*(18)* "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

~~(20)~~*(19)* "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

~~(21)~~*(20)* "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

~~(22)~~*(21)* "Quality assurance" means quality assessment and quality improvement.

~~(23)~~*(22)* "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

**Section 40.** Section 33-36-105, MCA, is amended to read:

"**33-36-105. ~~Department~~ *Commissioner* -- general powers and duties -- rulemaking.** (1) The ~~department~~ *commissioner* shall:

(a) adopt rules pursuant to the Montana Administrative Procedure Act establishing minimum state standards for network adequacy and quality assurance and procedures for ensuring compliance with those standards; and

(b) ~~recommend action to the commissioner~~ *if appropriate, initiate action* against a health carrier whose managed care plan does not comply with standards for network adequacy and quality assurance adopted by the ~~department~~ *commissioner*.

(2) Quality assurance standards adopted by the ~~department~~ *commissioner* must consist of some but not all of the health plan employer data and information standards. The ~~department~~ *commissioner* shall select and adopt only standards appropriate for quality assurance in Montana.

(3) The state may contract, through a competitive bidding process, for the development of network adequacy and quality assurance standards."

**Section 41.** Section 33-36-201, MCA, is amended to read:

"**33-36-201. Network adequacy -- standards -- access plan required.** (1) A health carrier offering a managed care plan in this state shall maintain a network that is sufficient in numbers and types of providers to ensure that all services to covered persons are accessible without unreasonable delay. Sufficiency in number and type of provider is determined in accordance with the requirements of this section. Covered persons must have access to emergency care 24 hours a day, 7 days a week. A health carrier providing a managed care plan shall use reasonable criteria to determine sufficiency. The criteria may include but are not limited to:

(a) a ratio of specialty care providers to covered persons;

(b) a ratio of primary care providers to covered persons;

(c) geographic accessibility;

(d) waiting times for appointments with participating providers;

(e) hours of operation; or

(f) the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(2) Whenever a health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the covered benefit were obtained from participating providers or shall make other arrangements acceptable to the ~~department~~ *commissioner*.

(3) The health carrier shall establish and maintain adequate provider networks to ensure reasonable proximity of participating providers to the businesses or personal residences of covered persons. In determining whether a health carrier has complied with this requirement, consideration must be given to the relative availability of health care providers in the service area under consideration.

(4) A health carrier offering a managed care plan in this state on ~~October 1, 1999~~ *January 1, 2024*, shall file with the ~~department~~ *commissioner* on ~~October 1, 1999~~ *December 1, 2023*, an access plan complying with subsection (6) and the rules of the ~~department~~ *commissioner*. A health carrier offering a managed care plan in this state for the first time after ~~October 1, 1999~~ *January 1, 2024*, shall file with the ~~department~~ *commissioner* an access plan meeting the

requirements of subsection (6) and the rules of the ~~department~~ *commissioner at least 60 days* before offering the managed care plan. A plan must be filed with the ~~department~~ *commissioner* in a manner and form complying with the rules of the ~~department~~ *commissioner*. A health carrier shall file any subsequent material changes in its access plan with the ~~department~~ *commissioner* ~~within~~ *at least* 30 days *prior to* ~~of~~ implementation of the change.

(5) A health carrier may request the ~~department~~ *commissioner* to designate parts of its access plan as proprietary or competitive information, and when designated, that part may not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. A health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide a copy of the plan upon request.

(6) An access plan for each managed care plan offered in this state must describe or contain at least the following:

(a) a listing of the names and specialties of the health carrier's participating providers;

(b) the health carrier's procedures for making referrals within and outside its network;

(c) the health carrier's process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in the managed care plan;

(d) the health carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(e) the health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(f) the health carrier's method of informing covered persons of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(g) the health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians and for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(h) the health carrier's process for enabling covered persons to change primary care professionals;

(i) the health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and a participating provider or in the event of the health carrier's insolvency or other inability to continue operations. The description must explain how covered persons will be notified of the contract termination or the health carrier's insolvency or other cessation of operations and be transferred to other providers in a timely manner.

(j) any other information required by the ~~department~~ *commissioner* to determine compliance with this part and the rules implementing this part.

(7) The ~~department~~ *commissioner* shall ensure timely and expedited review and approval of the access plan and other requirements in this section."

**Section 42.** Section 33-36-203, MCA, is amended to read:

"**33-36-203. Selection of providers -- professional credentials standards.** (1) A health carrier shall adopt standards for selecting participating providers who are primary care professionals and for each health care professional specialty within the health carrier's network. The health

carrier shall use the standards to select health care professionals, the health carrier's intermediaries, and any provider network with which the health carrier contracts. A health carrier may not adopt selection criteria that allow the health carrier to:

(a) avoid high-risk populations by excluding a provider because the provider is located in a geographic area that contains populations or providers presenting a risk of higher than average claims, losses, or use of health care services; or

(b) exclude a provider because the provider treats or specializes in treating populations presenting a risk of higher than average claims, losses, or use of health care services.

(2) Subsection (1) does not prohibit a health carrier from declining to select a provider who fails to meet the other legitimate selection criteria of the health carrier adopted in compliance with this part and the rules implementing this part.

(3) This part does not require a health carrier, its intermediary, or a provider network with which the health carrier or its intermediary contract to employ specific providers or types of providers who may meet their selection criteria or to contract with or retain more providers or types of providers than are necessary to maintain an adequate network.

(4) A health carrier may use criteria established in accordance with the provisions of this section to select health care professionals allowed to participate in the health carrier's managed care plan. A health carrier shall make its selection standards for participating providers available for review by the ~~department~~ *commissioner* and by each health care professional who is subject to the selection standards."

**Section 43.** Section 33-36-209, MCA, is amended to read:

"**33-36-209. Use of intermediaries -- responsibilities of health carriers, intermediaries, and providers.** (1) A health carrier is responsible for complying with applicable provisions of this chapter~~,~~ and contracting with an intermediary for all or some of the services for which a health carrier is responsible does not relieve the health carrier of responsibility for compliance.

(2) A health carrier may determine whether a subcontracted provider participates in the provider's own network or a contracted network for the purpose of providing covered benefits to the health carrier's covered persons.

(3) A health carrier shall maintain copies of all intermediary health care subcontracts at the health carrier's principal place of business in this state or ensure that the health carrier has access to all intermediary subcontracts, including the right to make copies of the contracts, upon 20 days' prior written notice from the health carrier.

(4) If required in a contract or otherwise by a health carrier, an intermediary shall transmit utilization documentation and claims-paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons. This duty may not be delegated to an intermediary by a health carrier.

(5) If required in a contract or otherwise by a health carrier, an intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons at its principal place of business in the state and preserve them for 5 years in a manner that facilitates regulatory review.

(6) An intermediary shall allow the commissioner ~~and the department~~ access to the intermediary's books, records, claim information, billing information, and other documentation of services provided to covered persons

that are required by any of those entities to determine compliance with this part and the rules implementing this part.

(7) A health carrier may, in the event of the intermediary's insolvency, require the assignment to the health carrier of the provisions of a participating provider's contract addressing the participating provider's obligation to furnish covered benefits."

**Section 44.** Section 33-36-210, MCA, is amended to read:

"**33-36-210. Contract filing requirements -- material changes -- state access to contracts.** (1) *A health carrier offering a managed care plan in this state on January 1, 2024, shall file with the commissioner on* ~~On October 1, 1999~~ *December 1, 2023*, ~~a health carrier offering a managed care plan shall file with the department~~ sample contract forms proposed for use with its participating providers and intermediaries. *A health carrier offering a managed care plan in this state for the first time after January 1, 2024, shall file with the commissioner sample contract forms proposed for use with its participating providers and intermediaries at least 60 days before offering the managed care plan.*

(2) A health carrier shall file with the ~~department~~ *commissioner* a material change to a contract. The change must be filed with the ~~department~~ *commissioner* at least 60 days before use of the proposed change. A change in a participating provider payment rate, coinsurance, copayment, or deductible or other plan benefit is not considered a material change for the purpose of this subsection.

(3) A health carrier shall maintain participating provider and intermediary contracts at its principal place of business in this state, or the health carrier must have access to all contracts and provide copies to the ~~department~~ *commissioner* ~~upon~~ *on* 20 days' prior written notice from the ~~department~~ *commissioner*."

**Section 45.** Section 33-36-211, MCA, is amended to read:

"**33-36-211. General contracting requirements.** (1) The execution of a contract for health care services with an intermediary by a health carrier does not relieve the health carrier of its duty to provide health care services to a person with whom the health carrier has contracted and does not relieve the health carrier of its responsibility for compliance with this chapter or the rules implementing this chapter.

(2) All contracts by a health carrier for the provision of health care services by a managed care plan must be in writing and are subject to review by the ~~department and the~~ commissioner."

**Section 46.** Section 33-36-212, MCA, is amended to read:

"**33-36-212. Contract compliance dates.** ~~(1)~~ A contract between a health carrier and a participating provider or intermediary ~~in effect on October 1, 1999,~~ must comply with this part and the rules implementing this part *on the date the contract is issued or put into effect* ~~by October 1, 1999~~. ~~The department may extend the October 1 date for an additional period of up to 6 months if the health carrier demonstrates good cause for an extension.~~

~~(2) A contract between a health carrier and a participating provider or intermediary issued or put into effect on or after October 1, 1999, must comply with this part and the rules implementing this part on the day that it is issued or put into effect.~~

~~(3) A contract between a health carrier and a participating provider or intermediary not described in subsection (1) or (2) must comply with this part and the rules implementing this part by October 1, 1999.~~"

**Section 47.** Section 33-36-213, MCA, is amended to read:

"**33-36-213. ~~Department rules~~ *Rulemaking authority.*** The ~~department~~ *commissioner* may adopt rules to implement this part."

**Section 48.** Section 33-36-301, MCA, is amended to read:

"**33-36-301. Quality assurance -- national accreditation.** (1) A health carrier whose managed care plan has been accredited by a nationally recognized accrediting organization shall annually provide a copy of the accreditation and the accrediting standards used by the accrediting organization to the ~~department~~ *commissioner*.

(2) If the ~~department~~ *commissioner* finds that the standards of a nationally recognized accrediting organization meet or exceed state standards and that the health carrier has been accredited by the nationally recognized accrediting organization, the ~~department~~ *commissioner* shall approve the quality assurance standards of the health carrier.

(3) The ~~department~~ *commissioner* shall maintain a list of accrediting organizations whose standards have been determined by the ~~department~~ *commissioner* to meet or exceed state quality assurance standards.

(4) Section 33-36-302 does not apply to a health carrier's managed care plan if the health carrier maintains current accreditation by a nationally recognized accrediting organization whose standards meet or exceed state quality assurance standards adopted pursuant to this part.

(5) This section does not prevent the ~~department~~ *commissioner* from monitoring a health carrier's compliance with this part."

**Section 49.** Section 33-36-302, MCA, is amended to read:

"**33-36-302. Standards for health carrier quality assessment programs.** A health carrier that issues a closed plan or a combination plan shall adopt and use infrastructure and disclosure systems sufficient to accurately measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of plans offered by the health carrier. To comply with this requirement, a health carrier shall:

(1) establish and use a system designed to assess the quality of health care provided to covered persons and appropriate to the types of plans offered by the health carrier. The system must include systematic collection, analysis, and reporting of relevant data.

(2) communicate in a timely fashion its findings concerning the quality of health care to regulatory agencies, providers, and consumers as provided in 33-36-304;

(3) report to the appropriate professional or occupational licensing board provided in Title 37 any persistent pattern of problematic care provided by a participating provider that is sufficient to cause the health carrier to terminate or suspend a contractual arrangement with the participating provider; and

(4) file a written description of the quality assessment program and any subsequent material changes with the ~~department~~ *commissioner* in a format that must be prescribed by rules of the ~~department~~ *commissioner*. The description must include a signed certification by a corporate officer of the health carrier that the health carrier's quality assessment program meets the requirements of this part."

**Section 50.** Section 33-36-303, MCA, is amended to read:

"**33-36-303. Standards for health carrier quality improvement programs.** A health carrier that issues a closed plan or a combination plan shall, in addition to complying with 33-36-302, adopt and use systems and methods necessary to improve the quality of health care provided in the health carrier's managed care plan as indicated by the health carrier's quality

assessment program and as required by this section. To comply with this requirement, a health carrier subject to this section shall:

(1) establish an internal system capable of identifying opportunities to improve care;

(2) use the findings generated by the system required by subsection (1) to work on a continuing basis with participating providers and other staff within the closed plan or closed component to improve the health care delivered to covered persons; *and*

(3) *consistent with this part,* adopt and use a program for measuring, assessing and improving the outcomes of health care as identified in the health carrier's quality improvement program plan *and provide at the commissioner's request a current quality improvement program plan*. ~~This quality improvement program plan must be filed with the department by October 1, 2000, and must be consistent with this part. A health carrier shall file any subsequent material changes to its quality improvement program plan within 30 days of implementation of the change.~~ The quality improvement program plan must:

(a) implement improvement strategies in response to quality assessment findings that indicate improvement is needed; and

(b) evaluate, not less than annually, the effectiveness of the strategies implemented pursuant to subsection (3)(a)."

**Section 51.** Section 33-36-304, MCA, is amended to read:

"**33-36-304. Reporting and disclosure requirements.** (1) A health carrier offering a closed plan or a combination plan shall document and communicate information, as required in this section, about its quality assurance program. The health carrier shall:

(a) include a summary of its quality assurance program in marketing materials;

(b) include a description of its quality assurance program and a statement of patient rights and responsibilities with respect to that program in the certificate of coverage or handbook provided to newly enrolled covered persons; and

(c) make available annually to providers and covered persons a report containing findings from its quality assurance program and information about its progress in meeting internal goals and external standards, when available.

(2) A health carrier shall certify to the ~~department~~ *commissioner* annually that its quality assurance program and the materials provided to providers and consumers in accordance with subsection (1) meet the requirements of this part.

(3) A health carrier shall make available, upon request and payment of a reasonable fee, the materials certified pursuant to subsection (2), except for the materials subject to the confidentiality requirements of 33-36-305 and materials that are proprietary to the managed care plan. A health carrier shall retain all certified materials for at least 3 years from the date that the material was certified or until the material has been examined as part of a market conduct examination, whichever is later."

**Section 52.** Section 33-36-305, MCA, is amended to read:

"**33-36-305. Confidentiality of health care and quality assurance records -- disclosure.** (1) Except as provided in subsection (2), the following information held by a health carrier offering a closed plan or a combination plan is confidential and may not be disclosed by the carrier to a person:

(a) information pertaining to the diagnosis, treatment, or health of a covered person, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable form;

(b) information considered by a quality assurance program and the records of its actions, including testimony of a member of a quality committee, of an officer, director, or other member of a health carrier or its staff engaged in assisting the quality committee or engaged in the health carrier's quality assessment, quality improvement, or quality assurance activities, or of any person assisting or furnishing information to the quality committee.

(2) The information specified in subsection (1) may be disclosed:

(a) as allowed by Title 33, chapter 19;

(b) as required in proceedings before the commissioner, a professional or occupational licensing board provided in Title 37, or the department *of public health and human services* pursuant to Title 50, chapter 5, part 2;

(c) in an appeal, if an appeal is permitted, from a quality committee's findings or recommendations; or

(d) as otherwise required by law or court order, including a judicial or administrative subpoena.

(3) Information specified in subsection (1) identifying:

(a) the provider may also be disclosed upon a written, dated, and signed approval of the provider if the information does not identify the covered person;

(b) the covered person may also be disclosed upon a written, dated, and signed approval of the covered person or of the parent or guardian of a covered person if the covered person is a minor and if the information does not identify the provider;

(c) neither the provider nor the covered person may also be disclosed upon request for use for statistical purposes only."

**Section 53.** Section 33-36-401, MCA, is amended to read:

"**33-36-401. Enforcement.** (1) If the ~~department~~ *commissioner* determines that a health carrier has not complied with this chapter or the rules implementing this chapter, the ~~department~~ *commissioner* may recommend corrective action to the health carrier.

(2) ~~At the recommendation of the department the~~ *The* commissioner may take an enforcement action provided in subsection (3) if:

(a) a health carrier fails to implement corrective action recommended by the ~~department~~ *commissioner*;

(b) corrective action taken by a health carrier does not result in bringing a health carrier into compliance with this chapter and the rules implementing this chapter within a reasonable period of time;

(c) ~~the department demonstrates to the commissioner that~~ a health carrier does not comply with this chapter or the rules implementing this chapter; or

(d) the commissioner determines that a health carrier has violated or is violating this chapter or the rules implementing this chapter.

(3) The commissioner may take any of the following enforcement actions to require a health carrier to comply with this chapter or the rules implementing this chapter:

(a) suspend or revoke the health carrier's certificate of authority or deny the health carrier's application for a certificate of authority; or

(b) use any of the commissioner's other enforcement powers provided in Title 33, chapter 1, part 3."

**Section 54. Repealer.** The following sections of the Montana Code Annotated are repealed:

33-2-322. Surplus lines advisory organization -- consultation with commissioner in developing approved risk list.
33-7-123. Commissioner as agent -- service of process -- procedure -- fee.
33-17-405. Service of process -- commissioner as agent.

**Section 55. Transition.** The department of public health and human services and the state auditor are authorized to transfer existing rules that implement the Managed Care Plan Network Adequacy and Quality Assurance Act, Title 33, chapter 36, to implement the provisions of [this act].

**Section 56. Codification instruction.** (1) [Section 8] is intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [section 8].

(2) [Section 13] is intended to be codified as an integral part of Title 33, chapter 7, part 1, and the provisions of Title 33, chapter 7, part 1, apply to [section 13].

(3) [Section 17] is intended to be codified as an integral part of Title 33, chapter 17, part 4, and the provisions of Title 33, chapter 17, part 4, apply to [section 17].

(4) [Section 37] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 37].

**Section 57. Effective dates.** (1) Except as provided in subsections (2), (3), and (4), [this act] is effective October 1, 2023.

(2) [Sections 2, 3, 4, 6, 8, 9, 13, 14, 15, 16, 17, 18, 20, 21, 22, 31, 35, 36, 37, 41, and 43] and this section are effective on passage and approval.

(3) [Section 33] is effective January 1, 2025.

(4) [Sections 38 through 40 and sections 42 through 53] are effective January 1, 2024.

**Section 58. Applicability.** [Section 6] applies to offenses that occur on or after [the effective date of this act].

Approved April 19, 2023

# CHAPTER NO. 158

[HB 132]

AN ACT MODIFYING TIMING OF AUDITS BY THE LEGISLATIVE AUDITOR; PROVIDING FOR AN ANNUAL AUDIT OF THE STATE ANNUAL FINANCIAL REPORT; PROVIDING FOR A TRANSITION FROM BIENNIAL TO ANNUAL AUDITS OF FEDERAL ASSISTANCE; PROVIDING GUIDANCE TO THE LEGISLATIVE AUDITOR ON SELECTION OF AGENCIES FOR AUDITING BASED ON CERTAIN CONSIDERATIONS; AMENDING SECTION 5-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-13-304, MCA, is amended to read:

"**5-13-304. Powers and duties.** The legislative auditor shall:

(1) ~~conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;~~*(a) perform an annual audit of the statewide annual financial report prepared by the department of administration in accordance with generally accepted accounting principles;*

*(b) continue to conduct a biennial single audit until June 30, 2025. For the fiscal year beginning July 1, 2025, and for each fiscal year thereafter, the legislative auditor shall perform an annual audit of federal financial assistance provided to the state that meets the requirements established by the federal government.*

*(c) conduct, or have conducted, compliance audits or audits of the financial affairs and transactions of all state agencies at an interval determined by the legislative auditor taking into consideration the agency's operations, risk, the complexity of its fiscal structure, and the nature and extent of previous audit findings;*

(2) conduct an audit to meet the standards and accomplish the objectives required in 5-13-308 whenever the legislative auditor determines it necessary and shall advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;

(7) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection."

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

Approved April 19, 2023

# CHAPTER NO. 159

[HB 116]

AN ACT REQUIRING PROVIDERS SERVING HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS TO PROVIDE PLANS OF CARE UNDER CERTAIN CIRCUMSTANCES; PROVIDING EXCEPTIONS; AND AMENDING SECTION 52-2-310, MCA.

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

**Section 1.** Section 52-2-310, MCA, is amended to read:

"**52-2-310. Development and use of qualified provider pools -- *circumstances requiring participation in the pool -- exceptions.*** (1) In order to accomplish the goals of 52-2-301, the department shall establish a pool of qualified in-state providers identified as willing and able to meet the significant needs of high-risk children with multiagency service needs who are currently placed or may be placed out of state. Using existing staff resources, the department shall design and implement a process in which licensed providers qualify for a pool by demonstrating their ability to provide mental health services for children:

(a) through use of available federal and state special revenue and state general fund money;

(b) in the least restrictive setting available;

(c) in accordance with the state's goal of using a wraparound philosophy of care and planning process; and

(d) using criteria established by the department to address the specialized needs of high-risk children with multiagency service needs.

(2) (a) ~~The~~ *Except as provided in subsection (3), the* department shall*:*

*(i)* allow any willing and qualified in-state provider to review a case involving a high-risk child with multiagency service needs and to propose a plan of care for providing in-state services to the child*; and*

*(ii) require an in-state provider to review each case involving a high-risk child with multiagency service needs and to propose a plan of care for providing in-state services to the child if:*

*(A) the provider is receiving an enhanced medicaid reimbursement rate because the provider has increased access to in-state care for medicaid-eligible Montana children who would otherwise be placed out of state to receive necessary care; and*

*(B) the provider offers services appropriate to the needs of the child.*

(b) Prior to contracting with a provider for the delivery of in-state services, the department shall determine that the plan of care submitted by the in-state provider is both cost-effective and in the best interests of the child.

(c) If a qualified in-state provider proposes a plan of care for providing in-state services to the child, the department may not certify a child for placement with an out-of-state provider unless it denies the plan of care proposed by the in-state provider.

*(3) (a) The department is not required to seek a plan of care from an in-state provider if doing so would delay placement and create a higher level of risk for the child in need of services or if the out-of-state provider is located nearer to the child's home or family than the in-state provider.*

*(b) An in-state provider is not required to review a case and propose a plan of care:*

*(i) for a child who has medically complex needs that cannot be met in the state;*

*(ii) for a child who is developmentally disabled with comorbidities;*

*(iii) if the provider's licensure precludes accepting the child; or*

*(iv) when accepting a child would pose a demonstrable risk to the child seeking admission, to other children currently receiving services from the provider, or to the provider's staff.*

*(c) The department shall adopt rules to outline the circumstances under which a provider would qualify for the exception allowed under subsection (3)(b)(iv).*

*(d) (i) A provider shall submit a plan of care within 2 working days of receiving a case for review.*

*(ii) A provider seeking an exception under subsection (3)(b)(iv) shall provide a statement in a form prescribed by the department to demonstrate the risk to the child seeking admission, to other children currently receiving services from the provider, or to the provider's staff.*"

Approved April 19, 2023

# CHAPTER NO. 160

[HB 18]

AN ACT ESTABLISHING THE MISSING PERSONS RESPONSE TEAM TRAINING GRANT PROGRAM; CREATING THE MISSING PERSONS RESPONSE TEAM TRAINING GRANT ACCOUNT; PROVIDING A FUND TRANSFER AND AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Missing persons response team training grant program -- reporting.** (1) There is a missing persons response team training grant program administered by the department of justice. The purpose of the grant program is to help fund training opportunities for community-based missing persons response teams.

(2) Eligible teams may be multiagency and multijurisdictional and may include other community entities and volunteers. Eligible teams shall:

(a) establish memorandums of understanding between the involved entities;

(b) develop operational procedures and criteria under which a team activation can occur; and

(c) participate in a community action planning effort conducted in accordance with department guidelines.

(3) Eligible training expenses include but are not limited to the licensing costs of a training program, facilitator and conference location fees, and travel expenses for training staff and trainees.

(4) The department shall report, in accordance with 5-11-210, on the grants awarded pursuant to this section to the state-tribal relations committee provided for in 5-5-229 by July 1 prior to each regular legislative session.

**Section 2. Missing persons response team training grant account.** (1) There is a missing persons response team training grant account in the state special revenue fund established in 17-2-102. The account is administered by the department of justice.

(2) Money transferred from any lawful source, including but not limited to gifts, grants, donations, securities, and other assets, public or private, may be deposited in the account.

(3) Money deposited in the account must be used pursuant to [section 1].

(4) Up to 10% of the funds deposited in the missing persons response team training grant account each year may be used for administrative costs by the department.

(5) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

**Section 3. Transfer of funds.** By July 15, 2023, the state treasurer shall transfer $61,000 from the state general fund to the missing persons response team training grant account established in [section 2].

**Section 4. Appropriation.** For the biennium beginning July 1, 2023, there is appropriated $61,000 from the missing persons response team training grant account established in [section 2] to the department of justice for the purposes described in [section 1].

**Section 5. Notification to tribal governments -- county sheriffs.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana and to the sheriff of each county in Montana.

**Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 44, chapter 2, part 4, and the provisions of Title 44, chapter 2, part 4, apply to [sections 1 through 2].

**Section 7. Effective date.** [This act] is effective July 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 161

[HB 27]

AN ACT PROVIDING NOTICE THAT EXISTING NONSTANDARD PENALTIES APPLY TO CERTAIN TRAFFIC REGULATIONS; AND AMENDING SECTIONS 61-8-303, 61-8-308, 61-8-312, 61-8-326, 61-8-331, 61-8-346, AND 61-8-356, MCA.

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

**Section 1.** Section 61-8-303, MCA, is amended to read:

"**61-8-303. Speed restrictions.** (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on an interstate highway outside an urbanized area of 50,000 population or more is 80 miles an hour at all times and the speed limit for vehicles traveling on interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane under the following circumstances:

(a) while traveling on a two-lane road; and

(b) in a designated passing zone.

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in this section are the maximum lawful speeds allowed.

(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314.

*(7) A person who violates this section is subject to the penalties provided in 61-8-725.*"

**Section 2.** Section 61-8-308, MCA, is amended to read:

"**61-8-308. Permission of authorities to hold speed contest.** *(1)* No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county, or city having jurisdiction and unless the same is fully and efficiently

patrolled for the entire distance over which such race or contest for speed is to be held.

*(2) A person who is convicted of violating this section is subject to the penalties provided in 61-8-717.*"

**Section 3.** Section 61-8-312, MCA, is amended to read:

"**61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles.** (1) Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton "manufacturer's rated capacity" traveling on:

(a) an interstate highway, as defined in 60-1-103, is 70 miles an hour; and

(b) any other public highway is 65 miles an hour.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(3) is 65 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

*(4) A person who violates this section is subject to the penalties provided in 61-8-725.*"

**Section 4.** Section 61-8-326, MCA, is amended to read:

"**61-8-326. No-passing zones.** (1) The department of transportation and local authorities may determine those portions of a highway in their respective jurisdictions where overtaking and passing or driving to the left side of the center of the roadway would be especially hazardous, and they may by official traffic control devices on the highway indicate the beginning and end of these zones. When the official traffic control devices are in place and clearly visible to an ordinarily observant person, an operator of a vehicle shall obey the directions of those devices.

(2) (a) Except as provided in subsection (2)(b), where official traffic control devices are in place to define a no-passing zone as set forth in subsection (1) an operator of a vehicle may not drive on the left side of the center of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

(b) Subsection (2)(a) does not apply to the operator of a faster vehicle passing a bicycle when:

(i) the bicycle is traveling at less than half the posted speed limit;

(ii) the faster vehicle is capable of overtaking and passing the bicycle without exceeding the posted speed limit; and

(iii) there is sufficient clear sight distance to the left side of the center of the roadway to meet the overtaking and passing requirements in 61-8-325.

(3) The provisions of this section do not apply under the conditions provided in 61-8-321(1) or to the operator of a vehicle that is turning left into or from an alley, private road, or driveway.

*(4) A person who is convicted of violating this section is subject to the penalties provided in 61-8-724.*"

**Section 5.** Section 61-8-331, MCA, is amended to read:

"**61-8-331. Restricted and controlled access.** (1) A person may not operate a vehicle onto or from a controlled-access roadway except at entrances and exits that are established by public authority.

(2) On a controlled-access highway or facility a person may not:

(a) operate a vehicle over, upon, or across a curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line if travel through the opening is not prohibited by an official traffic control device;

(c) operate a vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) operate a vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line that separates the service road from the highway or facility;

(e) construct, operate, or maintain a road or private driveway connecting with the highway or facility without first obtaining permission in writing from the public authority having jurisdiction.

*(3) (a) A person who is convicted of violating subsection (1) is subject to the penalties provided in 61-8-711.*

*(b) A person who is convicted of violating subsection (2) is subject to the penalties provided in 61-8-720.*"

**Section 6.** Section 61-8-346, MCA, is amended to read:

"**61-8-346. Operation of vehicles on approach of authorized emergency vehicles or law enforcement vehicles -- approaching stationary emergency vehicles or law enforcement vehicles -- reckless endangerment of emergency personnel.** (1) Upon the approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a law enforcement vehicle properly and lawfully making use of an audible signal only, the operator of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of an authorized emergency vehicle or law enforcement vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) On approaching and passing a stationary authorized emergency vehicle, law enforcement vehicle, or tow truck that is displaying visible signals of flashing or rotating amber, blue, red, or green lights or any temporary sign advising of an emergency scene or accident ahead, the operator of the approaching vehicle shall:

(a) cautiously and in a careful manner reduce the vehicle's speed to a reasonably lower and safe speed appropriate to the road and visual conditions or to the temporarily posted speed limit, but to a careful and prudent speed if a temporarily posted speed has not been posted;

(b) proceed with caution; and

(c) if possible considering safety and traffic conditions:

(i) move to a lane that is not adjacent to the lane in which the authorized emergency vehicle, law enforcement vehicle, or tow truck is located;

(ii) move as far away from the authorized emergency vehicle, law enforcement vehicle, or tow truck as possible; or

(iii) follow flagger instructions or instructions on sign boards.

(4) An operator of a vehicle who violates subsection (3) commits the offense of reckless endangerment of emergency personnel *and is subject to the penalties provided in 61-8-715*"

**Section 7.** Section 61-8-356, MCA, is amended to read:

"**61-8-356. Prohibition against parking or leaving vehicles on public property -- presumption of ownership.** (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for a period longer than 48 hours or upon a city street or state, county, or city property for a period longer than 5 days.

(2) The abandonment of a vehicle, other than a bicycle, on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the vehicle is sold.

(3) The filing of a theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2).

*(4) A person who is convicted of violating this section is subject to the penalties provided in 61-8-719.*"

Approved April 19, 2023

# CHAPTER NO. 162

[HB 38]

AN ACT MAKING THE THEFT OF A LIGHT VEHICLE A FELONY; REVISING SENTENCING LAWS FOR THEFT; AND AMENDING SECTION 45-6-301, MCA.

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

**Section 1.** 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, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) 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.

(7) (a) Except as provided in subsections (7)(b), *(7)(d),* and (7)~~(d)~~*(e)*, a person convicted of a first offense of the offense of theft of property not exceeding $1,500 in value shall be fined an amount not to exceed $500. A person convicted of a second offense 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. A person convicted of a third or subsequent offense shall be fined an amount not to exceed $500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

(b) (i) Except as provided in ~~subsection~~ *subsections* (7)(c) *and (7)(e)*, a person convicted of the offense of theft of property that exceeds $1,500 in value and does not exceed $5,000 in value shall be fined an amount not to exceed $1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed $1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed $5,000.

(ii) A person convicted of the theft of property exceeding $5,000 in value or as part of a common scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs, shall be fined an amount not to exceed $10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than $5,000 or more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(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.

(d) A person convicted of a first offense for the offense of theft of property not exceeding $1,500 in value and who utilized an emergency exit in furtherance of that offense 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. On a second conviction, the offender shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed $5,000 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

*(e) A person convicted of the offense of theft of property of a light vehicle, as defined in 61-1-101, 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.*

(8) 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.

(9) A person convicted of the offense of theft of property not exceeding $100 in value is presumed to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or felony offense in the past 5 years."

Approved April 19, 2023

# CHAPTER NO. 163

[HB 52]

AN ACT REVISING COMMON CARRIER LAWS; ELIMINATING REGULATION OF COMMON CARRIERS OF PASSENGERS, MESSAGES, AND PROPERTY; AMENDING SECTION 49-4-211, MCA; REPEALING SECTIONS 69-11-101, 69-11-102, 69-11-103, 69-11-104, 69-11-105, 69-11-106, 69-11-107, 69-11-108, 69-11-109, 69-11-121, 69-11-201, 69-11-202, 69-11-203, 69-11-204, 69-11-205, 69-11-206, 69-11-207, 69-11-208, 69-11-209, 69-11-301, 69-11-302, 69-11-303, 69-11-304, 69-11-401, 69-11-402, 69-11-403, 69-11-404, 69-11-405, 69-11-406, 69-11-407, 69-11-408, 69-11-409, 69-11-410, 69-11-411, 69-11-412, 69-11-421, 69-11-422, 69-11-423, 69-11-424, 69-11-425, 69-11-426, 69-11-427, 69-11-428, 69-11-429, 69-12-313, 69-12-601, 69-12-602, 69-12-603, 69-12-604, 69-12-605, AND 69-12-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 49-4-211, MCA, is amended to read:

"**49-4-211. Right to use public places and accommodations.** (1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, ~~and privileges of all common carriers, as defined in 69-11-101,~~ and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons."

**Section 2. Repealer.** The following sections of the Montana Code Annotated are repealed:

69-11-101. Definitions.
69-11-102. Restrictions on preferential treatment.
69-11-103. Time schedules to be followed.

69-11-104. Right to compensation.
69-11-105. Effect of agreements on rights and obligations of carrier and other parties.
69-11-106. Gratuitous carriers.
69-11-107. General duty of care of carriers for reward.
69-11-108. Prohibition on confiscation of fuel.
69-11-109. Provision for transportation of passengers and property for free or reduced rates.
69-11-121. Detriment caused by carrier.
69-11-201. Requirements for carriers of persons for reward.
69-11-202. Establishment and notice of schedule for passenger carriers.
69-11-203. Transport of passengers.
69-11-204. Carriage of baggage by carriers of persons.
69-11-205. Payment of fare by passengers.
69-11-206. Lien for payment of fare.
69-11-207. Authorization for free transportation.
69-11-208. Classes of persons who may receive free transportation.
69-11-209. Ejection of passengers.
69-11-301. Requirements for carriers of messages for reward.
69-11-302. Order of transmission of messages.
69-11-303. Damages for refused or delayed message.
69-11-304. Loss of valuable letters.
69-11-401. General definitions.
69-11-402. Relationship of carrier to consignor and consignee.
69-11-403. Acceptance of freight.
69-11-404. Delivery of freight.
69-11-405. Procedure to terminate carrier's liability.
69-11-406. Payment of freightage.
69-11-407. Natural increase of freight.
69-11-408. Apportionment of freightage by contract.
69-11-409. Adjustment of freightage for change in time or place of delivery.
69-11-410. Carrier's lien for freightage.
69-11-411. Sale of perishable property for freightage.
69-11-412. Division of joint rates among carriers.
69-11-421. Liability of inland carriers for loss.
69-11-422. Permissible limitations on liability.
69-11-423. Meaning of delivering carrier.
69-11-424. Examination of shipment.
69-11-425. Period in which to file claims.
69-11-426. Processing of claims for damage.
69-11-427. Liability between carriers.
69-11-428. Liability for delay.
69-11-429. Liability for valuable cargo.
69-12-313. Class C motor carrier certificate of public necessity.

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

69-12-601. Carrier agreements.
69-12-602. Limitations on carrier agreements.
69-12-603. Investigation of operation under agreement.
69-12-604. Hearing required on matters relating to agreements.
69-12-605. Relationship of carrier agreements and antitrust laws.
69-12-611. Leasing of power equipment.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 164

[HB 60]

AN ACT PROVIDING FOR AN ANNUAL FEE ON ELECTRIC VEHICLES REGISTERED IN THE STATE; PROVIDING DEFINITIONS; AMENDING SECTION 15-70-126, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Class 1 vehicle" means a vehicle having an unladen gross weight of less than 6,000 pounds.

(2) "Class 2 vehicle" means a vehicle having an unladen gross weight of at least 6,000 pounds but not more than 10,000 pounds.

(3) "Class 3 vehicle" means a vehicle having an unladen gross weight of greater than 10,000 pounds but not greater than 26,000 pounds.

(4) "Class 4 vehicle" means a vehicle having an unladen gross weight in excess of 26,000 pounds.

(5) (a) "Electric vehicle" means a vehicle that:

(i) is originally equipped with a 100%-electric motor that draws propulsion energy solely from a battery with at least 20 kilowatt hours of capacity that can be recharged from an external source of electricity;

(ii) has at least four wheels; and

(iii) is manufactured primarily for use on public streets, roads, and highways.

(b) The term does not include:

(i) a low-speed electric vehicle; or

(ii) a medium-speed electric vehicle.

(6) "Plug-in hybrid electric vehicle" means a vehicle that:

(a) is originally equipped so that the vehicle draws propulsion from an internal combustion engine and a battery with at least 5 kilowatt hours of capacity that can be recharged from an external source of electricity;

(b) has at least four wheels; and

(c) is manufactured primarily for use on public streets, roads, and highways.

**Section 2. Additional electric vehicle registration fees -- disposition.** In addition to the registration fees required pursuant to the provisions of Title 61, chapter 3, at the time of initial and renewal registration for an electric vehicle, there is an additional fee based on the weight of the electric vehicle as provided:

(1) The annual registration fees for electric vehicles other than plug-in hybrid electric vehicles is as follows:

(a) $130 for class 1 vehicles;

(b) $190 for class 2 vehicles;

(c) $340 for class 3 vehicles; and

(d) $1,100 for class 4 vehicles.

(2) The annual registration fees for plug-in hybrid electric vehicles is as follows:

(a) $70 for class 1 vehicles;

(b) $100 for class 2 vehicles;

(c) $210 for class 3 vehicles; and

(d) $700 for class 4 vehicles.

(3) The county treasurer or an authorized agent shall transmit the fees provided for in this section to the state as provided in 15-1-504 for deposit to the credit of the department in the highway restricted account provided for in 15-70-126.

**Section 3.** Section 15-70-126, MCA, is amended to read:

"**15-70-126. Highway restricted account.** (1) There is a highway restricted account in the state special revenue fund provided for in 17-2-102. All interest and income earned on the account must, in accordance with the provisions of 17-2-124, be deposited to the credit of the account and any unexpended balance in the account must remain in the account.

(2) Subject to subsection (4) and 15-70-403(2), all revenue sources provided for in Article VIII, section 6, of the Montana constitution must be deposited in the account, including but not limited to:

(a) all taxes collected under this chapter except as provided in 15-70-403(2)(b), (2)(c), (3)(b), and (3)(c);

(b) taxes collected for improperly imported fuel as provided in 15-70-419;

(c) fees collected for temporary special fuel permits as provided in 15-70-456; ~~and~~

(d) GVW license fees as provided in 61-10-225 and 61-10-226~~.~~*; and*

*(e) electric vehicle registration fees as provided in [section 2].*

(3) Except as provided in subsection (5), the money in the account is restricted and may be used only for the purpose of providing funding:

(a) for statutory refunds and adjustments;

(b) for debt service on highway revenue bonds;

(c) to the department for distribution to local governments as provided in 15-70-101;

(d) to the department for railroad grade crossing protection as provided in 15-70-102;

(e) until June 30, 2018, to the department of justice for expenses of the motor vehicle division;

(f) for gasoline tax allocations as provided in 60-3-201;

(g) to the department for administration of the motor carrier services functions;

(h) to the department for the highways in this state selected and designated by the transportation commission provided for in 2-15-2502;

(i) to the department for the collection of fuel taxes;

(j) for driver education, which may not exceed $10,000; and

(k) for tourist promotion, which may not exceed $10,000.

(4) (a) The portion of money collected from all revenue sources provided for in Article VIII, section 6, of the Montana constitution 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.

(b) The department is authorized to maintain a suspense account for gasoline and special fuel tax refunds and adjustments.

(5) The money in the account may be appropriated for purposes other than those listed in subsection (3) by a three-fifths vote of the members of each house of the legislature."

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 1 and 2].

**Section 5. Effective date.** [This act] is effective July 1, 2023.

**Section 6. Applicability.** [This act] applies to applies to electric vehicles that must be registered or reregistered after June 30, 2023.

Approved April 19, 2023

# CHAPTER NO. 165

[HB 79]

AN ACT CREATING A SEXUAL ASSAULT RESPONSE NETWORK PROGRAM WITHIN THE DEPARTMENT OF JUSTICE AND A SEXUAL ASSAULT RESPONSE TEAM COMMITTEE AND ASSIGNING DUTIES; REQUIRING THE SEXUAL ASSAULT RESPONSE TEAM COMMITTEE TO ADOPT EDUCATIONAL AND CLINICAL STANDARDS FOR SEXUAL ASSAULT NURSE EXAMINERS; PROVIDING FOR A SEXUAL ASSAULT RESPONSE NETWORK PROGRAM COORDINATOR; ESTABLISHING CERTAIN PAYMENT STANDARDS AND PROCESSES; REQUIRING PERIODIC REVIEW OF THE STANDARDS AND PROCESSES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 5-11-222 AND 46-15-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Sexual assault response network program.** There is a sexual assault response network program in the department of justice. The program, subject to the availability of appropriated funds, consists of the agents and employees of the department whom the attorney general considers necessary and appropriate, including the sexual assault response network program coordinator provided under [section 6]. The program has the duties provided under [section 4].

**Section 2. Sexual assault response team committee.** (1) There is a sexual assault response team committee in the department of justice.

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

(3) The committee has the duties provided for in [section 5]. The provisions of 2-15-124 do not apply.

(4) Committee members must be appointed by the Montana attorney general.

(5) Committee members shall serve at the pleasure of the appointing authority and for no longer than 4 years without reappointment. Committee membership includes but is not limited to:

(a) at least one sexual assault nurse examiner;

(b) a hospital administrator;

(c) a registered nurse or advanced practice registered nurse;

(d) a telehealth affiliate or provider;

(e) a representative from a victim service provider or organization;

(f) a representative from a law enforcement agency;

(g) a county attorney representative or designee;

(h) a member from the department of justice forensic sciences division;

(i) a member from the department of justice state attorney's office;

(j) a member from the department of justice information technology service desk;

(k) a representative of the office of state public defender; and

(l) a member with a tribal affiliation who has experience working with indigenous survivors.

(6) Each member is entitled to reimbursement of travel expenses incurred while in performance of committee duties by the department of justice as provided for in 2-18-501 through 2-18-503.

(7) A vacancy must be filled in the same manner as the original appointment.

**Section 3. Definitions.** As used in [sections 1 through 7], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Committee" means the sexual assault response team committee established in [section 2].

(2) "Department" means the department of justice.

(3) "Program" means the sexual assault response network program established in [section 1].

(4) "SANE" or "sexual assault nurse examiner" means a registered nurse with education and training in conducting forensic examinations of sexual assault victims.

(5) "SANE program" means a program that meets the requirements prescribed by the department of justice under [section 4].

(6) "Sexual assault" means a criminal offense that involves sexual contact or sexual intercourse as those terms are defined in 45-2-101.

(7) "Sexual assault response team" means a multidisciplinary team of specially trained members of health care, law enforcement, prosecution, and advocacy that work together to provide coordinated health care and advocacy services to victims of sexual assault, while investigating sexual assault cases for the purpose of criminal prosecution.

(8) "teleSANE" means the use of audio, video, or other telecommunications technology or media, including audio-only communication, to provide remote, real-time support by an off-site qualified provider to both the on-site nurse and the patient to ensure best practices, proper evidence collection, and a supportive environment.

**Section 4. Sexual assault response network program -- establish -- general powers and duties.** (1) The sexual assault response network program established under [section 1] will support efforts to provide uniform sexual assault evidence kit distribution and handling, coordinate a comprehensive, trauma-informed response to survivors of sexual violence, provide discipline-based training and technical assistance for sexual assault responders in accordance with national and state best practices and local laws, and advance access to quality sexual assault forensic examinations and care through teleSANE innovations.

(2) The department of justice shall adopt rules to establish:

(a) minimum standards of sexual assault care;

(b) minimum standards to operate a SANE program; and

(c) the operation and designation of SANE programs.

(3) The program's powers and duties include but are not limited to:

(a) coordinating with the sexual assault response team committee;

(b) conducting ongoing adult, adolescent, and pediatric didactic and clinical sexual assault nurse examiner training for medical professionals;

(c) recruiting and organizing sexual assault nurse examiner trainers to increase in-state training capacity;

(d) researching teleSANE models and technological solutions to increase access to sexual assault forensic examinations and sexual assault nurse examiner care;

(e) providing quality, accessible sexual assault response training and technical assistance for law enforcement, prosecution, victim advocates, and other relevant professionals;

(f) organizing the development of community sexual assault response teams;

(g) promoting public education and awareness of sexual violence prevention, available services, and care;

(h) maintaining the statewide sexual assault evidence kit tracking system provided for in 46-15-405;

(i) maintaining the department of justice sexual assault evidence kit hotline; and

(j) coordinating statewide sexual assault evidence kit inventory, materials, and distribution, including making sexual assault evidence kit resources available online.

(4) The department of justice may collaborate with other persons, victim service providers, health care facilities, the Montana hospital association, the Montana nurses association, the Montana coalition against domestic and sexual violence, the Montana sheriffs and peace officers association, the Montana association of chiefs of police, the Montana county attorneys' association, law enforcement agencies, and other government agencies to execute its general powers and duties under this section.

**Section 5. Sexual assault response team committee -- rulemaking -- duties.** The sexual assault response team committee established in [section 2] may adopt rules necessary for the implementation, continuation, and enforcement of the authority granted in this section. The committee's duties include but are not limited to:

(1) adopting educational and clinical standards for sexual assault nurse examiners. Standards must comply with national training standards for sexual assault medical forensic examiners, national protocol for sexual assault medical forensic examinations adult/adolescent and pediatric, guidelines from the international association of forensic nurses, and state and local laws.

(2) adopting and implementing an evidence-based sexual assault nurse examiner training curriculum that conforms with national training standards for sexual assault medical forensic examiners, national protocol for sexual assault medical forensic examinations adult/adolescent and pediatric, guidelines from the international association of forensic nurses, and state and local laws;

(3) adopting and implementing the state of Montana medical sexual assault response guidelines;

(4) developing statewide teleSANE partnerships, collaborations with hospital and clinic leadership, and strategies that include interoperability of health care systems, secure health information exchange, and assessment of teleSANE models of care to increase equitable access to quality sexual assault care; and

(5) identifying and implementing a statewide forensic nurse platform for sexual assault nurse examiners to engage, mentor, share, and network among colleagues; and

(6) establishing and periodically reviewing payment amounts and processes for the sexual assault medical forensic examination in accordance with 46-15-411 and periodically reviewing standards and payments for forensic exams performed under the forensic rape examination payment program.

**Section 6. Sexual assault response network program coordinator -- establish -- general duties.** (1) The department of justice shall employ a sexual assault response network program coordinator.

(2) The program coordinator shall administer the powers and duties of the program and committee as provided for in [sections 2 through 5].

**Section 7. Report required.** The department of justice shall report annually to the law and justice interim committee in accordance with 5-11-210 on the activities of the sexual assault response network program and the sexual assault response team committee under [sections 2 through 5].

**Section 8.** Section 5-11-222, MCA, is amended to read:

"**5-11-222. Reports to legislature.** (1) (a) Except as provided in subsection (1)(b) and (6), a report to the legislature means a biennial report required by the legislature and filed in accordance with 5-11-210 on or before September 1 of each year preceding the convening of a regular session of the legislature.

(b) If otherwise specified in law, a report may be required more or less frequently than the biennial requirement in subsection (1)(a).

(2) Reports to the legislature include:

(a) annual reports on the unified investment program for public funds and public retirement systems and state compensation insurance fund assets audits from the board of investments in accordance with Article VIII, section 13 of the Montana constitution;

(b) federal mandates requirements from the governor in accordance with 2-1-407;

(c) activities of the state records committee in accordance with 2-6-1108;

(d) revenue studies from the director of revenue, if requested, in accordance with 2-7-104;

(e) legislative audit reports from the legislative audit division in accordance with 2-8-112 and 23-7-410;

(f) progress on gender and racial balance from the governor in accordance with 2-15-108;

(g) a mental health report from the ombudsman in accordance with 2-15-210;

(h) policies related to children and families from the interagency coordinating council for state prevention in accordance with 2-15-225;

(i) watercourse name changes, if any, from the secretary of state in accordance with 2-15-401;

(j) results of programs established in 2-15-3111 through 2-15-3113 from the livestock loss board in accordance with 2-15-3113;

(k) the allocation of space report from the department of administration required in accordance with 2-17-101;

(l) information technology activities in accordance with 2-17-512;

(m) state strategic information technology plan exceptions, if granted, from the department of administration in accordance with 2-17-515;

(n) the state strategic information technology plan and biennial report from the department of administration in accordance with 2-17-521 and 2-17-522;

(o) reports from standing, interim, and administrative committees, if prepared, in accordance with 2-17-825 and 5-5-216;

(p) statistical and other data related to business transacted by the courts from the court administrator, if requested, in accordance with 3-1-702;

(q) the judicial standards commission report in accordance with 3-1-1126;

(r) an annual report on the actual cost of legislation that had a projected fiscal impact from the office of budget and program planning in accordance with 5-4-208;

(s) a link to annual state agency reports on grants awarded in the previous fiscal year established by the legislative finance committee in accordance with 5-12-208;

(t) reports prepared by the legislative fiscal analyst, and as determined by the analyst, in accordance with 5-12-302(4);

(u) a report, if necessary, on administrative policies or rules adopted under 5-11-105 that may impair the independence of the legislative audit division in accordance with 5-13-305;

(v) if a waste of state resources occurs, a report from the legislative state auditor, in accordance with 5-13-311;

(w) school funding commission reports each fifth interim in accordance with 5-20-301;

(x) a report of political committee operations conducted on state-owned property, if required, from a political committee to the legislative services division in accordance with 13-37-404;

(y) a report concerning taxable value from the department of revenue in accordance with 15-1-205;

(z) a report on tax credits from the revenue interim committee in accordance with 15-30-2303;

(aa) semiannual reports on the Montana heritage preservation and development account from the Montana heritage preservation and development commission in accordance with 15-65-121;

(bb) general marijuana regulation reports from the department of revenue in accordance with 16-12-110;

(cc) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(dd) annual reports on general fund and nongeneral fund encumbrances from the department of administration in accordance with 17-1-102;

(ee) loans or loan extensions authorized for two consecutive fiscal years from the department of administration and office of commissioner of higher education, including negative cash balances from the commissioner of higher education, in accordance with 17-2-107;

(ff) a report of local government entities that have balances contrary to limitations provided for in 17-2-302 or that failed to reduce the charge from the department of administration in accordance with 17-2-304;

(gg) an annual report from the board of investments in accordance with 17-5-1650(2);

(hh) a report on retirement system trust investments and benefits from the board of investments in accordance with 17-6-230;

(ii) recommendations for reductions in spending and related analysis, if required, from the office of budget and program planning in accordance with 17-7-140;

(jj) a statewide facility inventory and condition assessment from the department of administration in accordance with 17-7-202;

(kk) actuary reports and investigations for public retirement systems from the public employees' retirement board in accordance with 19-2-405;

(ll) a work report from the public employees' retirement board in accordance with 19-2-407;

(mm) annual actuarial reports and evaluations from the teachers' retirement board in accordance with 19-20-201;

(nn) reports from the state director of K-12 career and vocational and technical education, as requested, in accordance with 20-7-308;

(oo) 5-year state plan for career and technical education reports from the board of regents in accordance with 20-7-330;

(pp) a gifted and talented students report from the office of public instruction in accordance with 20-7-904;

(qq) status changes for at-risk students from the office of public instruction in accordance with 20-9-328;

(rr) status changes for American Indian students from the office of public instruction in accordance with 20-9-330;

(ss) reports regarding the Montana Indian language preservation program from the office of public instruction in accordance with 20-9-537;

(tt) proposals for funding community colleges from the board of regents in accordance with 20-15-309;

(uu) expenditures and activities of the Montana agricultural experiment station and extension service, as requested, in accordance with 20-25-236;

(vv) reports, if requested by the legislature, from the president of each of the units of the higher education system in accordance with 20-25-305;

(ww) reports, if prepared by a public postsecondary institution, regarding free expression activities on campus in accordance with 20-25-1506;

(xx) reports from the Montana historical society trustees in accordance with 22-3-107;

(yy) state lottery reports in accordance with 23-7-202;

(zz) a report from the division of banking and financial institutions, if required, from the department of administration in accordance with 32-11-306;

(aaa) state fund reports, if required, from the commissioner in accordance with 33-1-115;

(bbb) reports from the department of labor and industry in accordance with 39-6-101;

(ccc) victim unemployment benefits reports from the department of labor and industry in accordance with 39-51-2111;

(ddd) state fund business reports in accordance with 39-71-2363;

(eee) risk-based capital reports, if required, from the state fund in accordance with 39-71-2375;

(fff) child custody reports from the office of the court administrator in accordance with 41-3-1004;

(ggg) reports of remission of fine or forfeiture, respite, commutation, or pardon granted from the governor in accordance with 46-23-316;

(hhh) annual statewide public defender reports from the office of state public defender in accordance with 47-1-125;

(iii) a trauma care system report from the department of public health and human services in accordance with 50-6-402;

(jjj) an older Montanans trust fund report from the department of public health and human services in accordance with 52-3-115;

(kkk) Montana criminal justice oversight council reports in accordance with 53-1-216;

(lll) medicaid block grant reports from the department of public health and human services in accordance with 53-1-611;

(mmm) reports on the approval and implementation status of medicaid section 1115 waivers in accordance with 53-2-215;

(nnn) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(ooo) medicaid funding reports from the department of public health and human services in accordance with 53-6-110;

(ppp) proposals regarding managed care for medicaid recipients, if required, from the department of public health and human services in accordance with 53-6-116;

(qqq) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(rrr) a compliance and inspection report from the department of corrections in accordance with 53-30-604;

(sss) emergency medical services grants from the department of transportation in accordance with 61-2-109;

(ttt) annual financial reports on the environmental contingency account from the department of environmental quality in accordance with 75-1-1101;

(uuu) the Flathead basin commission report in accordance with 75-7-304;

(vvv) a report from the land board, if prepared, in accordance with 76-12-109;

(www) an annual state trust land report from the land board in accordance with 77-1-223;

(xxx) a noxious plant report, if prepared, from the department of agriculture in accordance with 80-7-713;

(yyy) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(zzz) reports on the allocation of renewable resources grants and loans for emergencies, if required, from the department of natural resources and conservation in accordance with 85-1-605;

(aaaa) water storage projects from the governor's office in accordance with 85-1-704;

(bbbb) upper Clark Fork River basin steering committee reports, if prepared, in accordance with 85-2-338;

(cccc) upland game bird enhancement program reports in accordance with 87-1-250;

(dddd) private land/public wildlife advisory committee reports in accordance with 87-1-269;

(eeee) a future fisheries improvement program report from the department of fish, wildlife, and parks in accordance with 87-1-272;

(ffff) license revenue recommendations from the department of fish, wildlife, and parks in accordance with 87-1-629;

(gggg) land information data reports from the state library in accordance with 90-1-404;

(hhhh) hydrocarbon and geology investigation reports from the bureau of mines and geology in accordance with 90-2-201;

(iiii) coal ash markets investigation reports from the department of commerce in accordance with 90-2-202;

(jjjj) an annual report from the pacific northwest electric power and conservation planning council in accordance with 90-4-403;

(kkkk) community property-assessed capital enhancements program reports from the Montana facility finance authority in accordance with 90-4-1303;

(llll) veterans' home loan mortgage loan reports from the board of housing in accordance with 90-6-604;

(mmmm) matching infrastructure planning grant awards by the department of commerce in accordance with 90-6-703(3); and

(nnnn) treasure state endowment program reports from the department of commerce in accordance with 90-6-710;

(3) Reports to the legislature include reports made to an interim committee as follows:

(a) reports to the law and justice interim committee, including:

(i) findings of the domestic violence fatality review commission in accordance with 2-15-2017;

(ii) the report from the missing indigenous persons review commission in accordance with 2-15-2018;

(iii) reports from the department of justice and public safety officer standards and training council in accordance with 2-15-2029;

(iv) information on the Montana False Claims Act from the department of justice in accordance with 17-8-416;

(v) annual case status reports from the attorney general in accordance with 41-3-210;

(vi) office of court administrator reports in accordance with 41-5-2003;

*(vii) the annual report on the activities of the sexual assault response network program and the sexual assault response team committee from the department of justice in accordance with [section 7];*

~~(vii)~~*(viii)* statewide public safety communications system activities from the department of justice in accordance with 44-4-1606;

~~(viii)~~*(ix)* reports on the status of the crisis intervention team training program from the board of crime control in accordance with 44-7-110;

~~(ix)~~*(x)* restorative justice grant program status and performance from the board of crime control in accordance with 44-7-302;

~~(x)~~*(xi)* reports on offenders under supervision with new offenses or violations from the department of corrections in accordance with 46-23-1016;

~~(xi)~~*(xii)* supervision responses grid reports from the department of corrections in accordance with 46-23-1028;

~~(xii)~~*(xiii)* statewide public defender reports and information from the office of state public defender in accordance with 47-1-125;

~~(xiii)~~*(xiv)* every 5 years, a percentage change in public defender funding report from the legislative fiscal analyst in accordance with 47-1-125;

~~(xiv)~~*(xv)* every 5 years, statewide public defender reports on the percentage change in funding from the office of state public defender in accordance with 47-1-125; and

~~(xv)~~*(xvi)* a report from the quality assurance unit from the department of corrections in accordance with 53-1-211;

(b) reports to the state administration and veterans' affairs interim committee, including:

(i) a report that includes information technology activities and additional information from the information technology board in accordance with 2-17-512 and 2-17-513;

(ii) a report from the capitol complex advisory council in accordance with 2-17-804;

(iii) a report on the employee incentive award program from the department of administration in accordance with 2-18-1103;

(iv) a board of veterans' affairs report in accordance with 10-2-102;

(v) a report on grants to the Montana civil air patrol from the department of military affairs in accordance with 10-3-802;

(vi) annual reports on statewide election security from the secretary of state in accordance with 13-1-205;

(vii) a report regarding the youth voting program, if requested, from the secretary of state in accordance with 13-22-108;

(viii) a report from the commissioner of political practices in accordance with 13-37-120;

(ix) a report on retirement system trust investments from the board of investments in accordance with 17-6-230;

(x) actuarial valuations and other reports from the public employees' retirement board in accordance with 19-2-405 and 19-3-117;

(xi) actuarial valuations and other reports from the teachers' retirement board in accordance with 19-20-201 and 19-20-216;

(xii) a report on the reemployment of retired members of the teachers' retirement system from the teachers' retirement board in accordance with 19-20-732; and

(xiii) changes, if any, affecting filing-office rules under the Uniform Commercial Code from the secretary of state in accordance with 30-9A-527;

(c) reports to the children, families, health, and human services interim committee, including:

(i) performance data from the department of public health and human services in accordance with 2-15-2225;

(ii) quarterly reports on data requirements from the department of public health and human services in accordance with 5-12-303;

(iii) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(iv) Montana HELP Act workforce development reports from the department of public health and human services in accordance with 39-12-103;

(v) annual reports from the child and family ombudsman in accordance with 41-3-1211;

(vi) reports on activities and recommendations on child protective services activities, if required, from the child and family ombudsman in accordance with 41-3-1215;

(vii) reports on the out-of-state placement of high-risk children with multiagency service needs from the department of public health and human services in accordance with 52-2-311;

(viii) private alternative adolescent residential and outdoor programs reports from the department of public health and human services in accordance with 52-2-803;

(ix) an annual Montana parents as scholars program report from the department of public health and human services in accordance with 53-4-209;

(x) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(xi) a report concerning mental health managed care services, if managed care is in place, from the advisory council in accordance with 53-6-710;

(xii) quarterly medicaid reports related to expansion from the department of public health and human services in accordance with 53-6-1325;

(xiii) annual Montana developmental center reports from the department of public health and human services in accordance with 53-20-225; and

(xiv) annual children's mental health outcomes from the department of public health and human services in accordance with 53-21-508;

(xv) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(d) reports to the economic affairs interim committee, including:

(i) the annual state compensation insurance fund budget from the board of directors in accordance with 5-5-223 and 39-71-2363;

(ii) general marijuana regulation reports from the department of revenue in accordance with 16-12-110(3);

(iii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(iv) annual reports on complaints against physicians certifying medical marijuana use from the board of medical examiners in accordance with 16-12-532(4);

(v) an annual report on the administrative rate required from the department of commerce from the Montana heritage preservation and development commission in accordance with 22-3-1002;

(vi) state fund reports from the insurance commissioner, if required, in accordance with 33-1-115;

(vii) risk-based capital reports, if required, from the state fund in accordance with 33-1-115 and 39-71-2375;

(viii) annual reinsurance reports from the Montana reinsurance association board required in accordance with 33-22-1308;

(ix) reports from the department of labor and industry concerning board attendance in accordance with 37-1-107;

(x) annual reports on physician complaints related to medical marijuana from the board of medical examiners in accordance with 37-3-203;

(xi) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(xii) status reports on the special revenue account and fees charged as a funding source from the board of funeral service in accordance with 37-19-204;

(xiii) unemployment insurance program integrity act reports from the department of labor and industry in accordance with 39-15-706;

(xiv) status reports on the distressed wood products industry revolving loan program from the department of commerce in accordance with 90-1-503;

(e) reports to the education interim committee, including:

(i) reemployment of retired teachers, specialists, and administrators reports from the retirement board in accordance with 19-20-732;

(ii) a report on participation in the interstate compact on educational opportunity for military children in accordance with 20-1-231;

(iii) grow your own grant program reports from the commissioner of higher education in accordance with 20-4-601;

(iv) standards of accreditation proposals and economic impact statements from the board of public education in accordance with 20-7-101;

(v) advanced opportunity program reports from the board of public education in accordance with 20-7-1506;

(vi) progress on transformational learning plans from the board of public education in accordance with 20-7-1602;

(vii) budget amendments, if needed, from school districts in accordance with 20-9-161;

(viii) annual Montana resident student financial aid program reports from the commissioner of higher education in accordance with 20-26-105;

(ix) a historic preservation office report from the historic preservation officer in accordance with 22-3-423; and

(x) interdisciplinary child information agreement reports from the office of public instruction in accordance with 52-2-211;

(f) reports to the energy and telecommunications interim committee, including:

(i) the high-performance building report from the department of administration in accordance with 17-7-214;

(ii) an annual report from the consumer counsel in accordance with 69-1-222;

(iii) annual universal system benefits reports from utilities, electric cooperatives, and the department of revenue in accordance with 69-8-402;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501; and

(v) geothermal reports from the Montana bureau of mines and geology in accordance with 90-3-1301;

(g) reports to the revenue interim committee, including:

(i) use of the qualified endowment tax credit report from the department of revenue in accordance with 15-1-230;

(ii) tax rates for the upcoming reappraisal cycle from the department of revenue in accordance with 15-7-111;

(iii) gray water property tax abatement usage reports from the department of revenue in accordance with 15-24-3211;

(iv) information about job growth incentive tax credits from the department of revenue in accordance with 15-30-2361;

(v) student scholarship contributions from the department of revenue in accordance with 15-30-3112;

(vi) tax havens from the department of revenue in accordance with 15-31-322;

(vii) media production tax credit economic impact reports from the department of commerce in accordance with 15-31-1011;

(viii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(5);

(ix) complaints against physicians certifying use of medical marijuana from the board of medical examiners in accordance with 16-12-532(5); and

(x) reports that actual or projected receipts will result in less revenue than estimated from the office of budget and program planning, if necessary, in accordance with 17-7-140;

(h) reports to the transportation interim committee, including:

(i) biodiesel tax refunds from the department of transportation in accordance with 15-70-433;

(ii) cooperative agreement negotiations from the department of transportation in accordance with 15-70-450;

(iii) an annual alternative project delivery contracting report from the department of transportation in accordance with 60-2-119; and

(iv) a special fuels inspection report from the department of transportation in accordance with 61-10-154;

(i) reports to the environmental quality council, including:

(i) compliance and enforcement reports required in accordance with 75-1-314;

(ii) the state solid waste management and resource recovery plan, every 5 years, from the department of environmental quality in accordance with 75-10-111;

(iii) annual orphan share reports from the department of environmental quality in accordance with 75-10-743;

(iv) Libby asbestos superfund oversight committee reports in accordance with 75-10-1601;

(v) annual subdivision sanitation reports from the department of environmental quality in accordance with 76-4-116;

(vi) state trust land accessibility reports from the department of natural resources and conservation in accordance with 77-1-820;

(vii) biennial land banking reports and annual state land cabin and home site sales reports from the department of natural resources and conservation in accordance with 77-2-366;

(viii) biennially invasive species reports from the departments of fish, wildlife, and parks and natural resources and conservation in accordance with 80-7-1006;

(ix) annual upper Columbia conservation commission reports in accordance with 80-7-1026;

(x) annual invasive species council reports in accordance with 80-7-1203;

(xi) sand and gravel reports, if an investigation is completed, in accordance with 82-2-701;

(xii) annual sage grouse population reports from the department of fish, wildlife, and parks in accordance with 87-1-201;

(xiii) annual gray wolf management reports from the department of fish, wildlife, and parks in accordance with 87-1-901;

(xiv) biennial Tendoy Mountain sheep herd reports from the department of fish, wildlife, and parks in accordance with 87-2-702;

(xv) wildlife habitat improvement project reports from the department of fish, wildlife, and parks in accordance with 87-5-807; and

(xvi) annual sage grouse oversight team activities and staffing reports in accordance with 87-5-918;

(j) reports to the water policy interim committee, including:

(i) drought and water supply advisory committee reports in accordance with 2-15-3308;

(ii) total maximum daily load reports from the department of environmental quality in accordance with 75-5-703;

(iii) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501;

(v) renewable resource grant and loan program reports from the department of natural resources and conservation in accordance with 85-1-621;

(vi) quarterly adjudication reports from the department of natural resources and conservation and the water court in accordance with 85-2-281;

(vii) water reservation reports from the department of natural resources and conservation in accordance with 85-2-316;

(viii) instream flow reports from the department of fish, wildlife, and parks in accordance with 85-2-436; and

(ix) ground water investigation program reports from the bureau of mines and geology in accordance with 85-2-525;

(k) reports to the local government interim committee, including:

(i) sand and gravel, if an investigation is completed, in accordance with 82-2-701;

(ii) assistance to local governments on federal land management proposals from the department of commerce in accordance with 90-1-182; and

(iii) emergency financial assistance to local government reports from the department of commerce, if requests are made, in accordance with 90-6-703(2);

(l) reports to the state-tribal relations committee, including:

(i) reports from the missing indigenous persons review commission in accordance with 2-15-2018;

(ii) the Montana Indian language preservation program report from the state-tribal economic development commission in accordance with 20-9-537;

(iii) reports from the missing indigenous persons task force in accordance with 44-2-411

(iv) a decennial economic contributions and impacts of Indian reservations report from the department of commerce in accordance with 90-1-105;

(v) state-tribal economic development commission activities reports from the state-tribal economic development commission in accordance with 90-1-132; and

(vi) state-tribal economic development commission reports provided regularly by the state director of Indian affairs in accordance with 90-11-102.

(4) (a) Except as provided in subsections (4)(b) and (6) and unless otherwise required by law, a report made to the legislature in accordance with subsection

(3) may be provided orally before September 1 of each year preceding the convening of a regular session of the legislature and in accordance with 5-11-210(1)(b).

(b) After receiving an oral report, an interim or administrative committee responsible for receiving the report may request a written report be filed with the legislature in accordance with 5-11-210(1)(a).

(c) This section may not be interpreted to preclude an interim or administrative committee from requesting additional information.

(5) Reports to the legislature include multistate compact and agreement reports including:

(a) multistate tax compact reports in accordance with 15-1-601;

(b) interstate compact on educational opportunity for military children reports in accordance with 20-1-230 and 20-1-231;

(c) compact for education reports in accordance with 20-2-501;

(d) Western regional higher education compact reports in accordance with 20-25-801;

(e) interstate insurance product regulation compact reports in accordance with 33-39-101;

(f) interstate medical licensure compact reports in accordance with 37-3-356;

(g) interstate compact on juveniles reports in accordance with 41-6-101;

(h) interstate compact for adult offender supervision reports in accordance with 46-23-1115;

(i) vehicle equipment safety compact reports in accordance with 61-2-201;

(j) multistate highway transportation agreement reports in accordance with 61-10-1101; and

(k) western interstate nuclear compact reports in accordance with 90-5-201.

(6) Reports, transfers, statements, assessments, recommendations and changes required under 17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, 23-7-202, 33-1-115, and 39-71-2375 must be provided as soon as the report is published and publicly available. Reports required in subsections (2)(a), (2)(gg), (2)(hh), and (3)(b)(ix) must be provided following issuance of reports issued under Title 5, chapter 13."

**Section 9.** Section 46-15-405, MCA, is amended to read:

"**46-15-405. Statewide sexual assault evidence kit tracking system -- rulemaking.** (1) The *sexual assault response network program within the* department of justice shall ~~create,~~ operate~~,~~ and maintain a statewide sexual assault evidence kit tracking system. The tracking system must:

(a) track the status of a sexual assault evidence kit from the collection site through the criminal justice process, including the initial collection at a health care facility, inventory and storage by law enforcement agencies, analysis at a crime laboratory, and storage or destruction after completion of analysis;

(b) allow law enforcement agencies, health care facilities, a crime laboratory, and other entities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits; and

(c) allow an individual to anonymously access the tracking system to track the location and status of the individual's sexual assault evidence kit.

(2) The department of justice shall adopt rules for developing and using the sexual assault evidence kit tracking system. Law enforcement agencies, health care facilities, and crime laboratories shall use the tracking system as provided in the rules.

(3) Information contained in the sexual assault evidence kit tracking system is confidential and not subject to public disclosure."

**Section 10. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 11. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, apply to [sections 1 and 2].

(2) [Sections 3 through 7] are intended to be codified as a new part in Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 3 through 7].

**Section 12. Effective date.** [This act] is effective July 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 166

[HB 109]

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 68TH LEGISLATURE AND PREVIOUS LEGISLATURES; DIRECTING THE CODE COMMISSIONER THAT WHEREVER A REFERENCE TO SECTION 5-11-210, MCA, APPEARS IN LEGISLATION ENACTED BY THE 2023 LEGISLATURE AND REQUIRES A NEW REPORT TO THE LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO INCLUDE THE REPORT UNDER THE APPROPRIATE INTERIM COMMITTEE IN SECTION 5-11-222, MCA; DIRECTING THE CODE COMMISSIONER THAT WHEREVER A REFERENCE TO SECTION 5-11-210, MCA, IS REPEALED OR STRICKEN IN LEGISLATION ENACTED BY THE 2023 LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO STRIKE THAT REPORT FROM SECTION 5-11-222, MCA; AND AMENDING SECTIONS 5-11-222, 10-3-125, 13-3-205, 15-30-2131, 19-13-115, 30-10-103, 30-10-1103, 37-31-101, 46-23-1016, 50-2-116, 50-2-118, 50-19-205, 50-20-709, 61-5-129, 61-5-208, 69-3-904, 87-2-124, AND 87-6-415, MCA.

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

**Section 1.** Section 5-11-222, MCA, is amended to read:

"**5-11-222. Reports to legislature.** (1) (a) Except as provided in subsection (1)(b) and (6), a report to the legislature means a biennial report required by the legislature and filed in accordance with 5-11-210 on or before September 1 of each year preceding the convening of a regular session of the legislature.

(b) If otherwise specified in law, a report may be required more or less frequently than the biennial requirement in subsection (1)(a).

(2) Reports to the legislature include:

(a) annual reports on the unified investment program for public funds and public retirement systems and state compensation insurance fund assets audits from the board of investments in accordance with Article VIII, section 13 of the Montana constitution;

(b) federal mandates requirements from the governor in accordance with 2-1-407;

(c) activities of the state records committee in accordance with 2-6-1108;

(d) revenue studies from the director of revenue, if requested, in accordance with 2-7-104;

(e) legislative audit reports from the legislative audit division in accordance with 2-8-112 and 23-7-410;

(f) progress on gender and racial balance from the governor in accordance with 2-15-108;

(g) a mental health report from the ombudsman in accordance with 2-15-210;

(h) policies related to children and families from the interagency coordinating council for state prevention in accordance with 2-15-225;

(i) watercourse name changes, if any, from the secretary of state in accordance with 2-15-401;

(j) results of programs established in 2-15-3111 through 2-15-3113 from the livestock loss board in accordance with 2-15-3113;

(k) the allocation of space report from the department of administration required in accordance with 2-17-101;

(l) information technology activities in accordance with 2-17-512;

(m) state strategic information technology plan exceptions, if granted, from the department of administration in accordance with 2-17-515;

(n) the state strategic information technology plan and biennial report from the department of administration in accordance with 2-17-521 and 2-17-522;

(o) reports from standing, interim, and administrative committees, if prepared, in accordance with 2-17-825 and 5-5-216;

(p) statistical and other data related to business transacted by the courts from the court administrator, if requested, in accordance with 3-1-702;

(q) the judicial standards commission report in accordance with 3-1-1126;

(r) an annual report on the actual cost of legislation that had a projected fiscal impact from the office of budget and program planning in accordance with 5-4-208;

(s) a link to annual state agency reports on grants awarded in the previous fiscal year established by the legislative finance committee in accordance with 5-12-208;

(t) reports prepared by the legislative fiscal analyst, and as determined by the analyst, in accordance with 5-12-302(4);

(u) a report, if necessary, on administrative policies or rules adopted under 5-11-105 that may impair the independence of the legislative audit division in accordance with 5-13-305;

(v) if a waste of state resources occurs, a report from the legislative state auditor, in accordance with 5-13-311;

(w) school funding commission reports each fifth interim in accordance with 5-20-301;

(x) a report of political committee operations conducted on state-owned property, if required, from a political committee to the legislative services division in accordance with 13-37-404;

(y) a report concerning taxable value from the department of revenue in accordance with 15-1-205;

(z) a report on tax credits from the revenue interim committee in accordance with 15-30-2303;

(aa) semiannual reports on the Montana heritage preservation and development account from the Montana heritage preservation and development commission in accordance with 15-65-121;

(bb) general marijuana regulation reports from the department of revenue in accordance with 16-12-110;

(cc) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(dd) annual reports on general fund and nongeneral fund encumbrances from the department of administration in accordance with 17-1-102;

(ee) loans or loan extensions authorized for two consecutive fiscal years from the department of administration and office of commissioner of higher education, including negative cash balances from the commissioner of higher education, in accordance with 17-2-107;

(ff) a report of local government entities that have balances contrary to limitations provided for in 17-2-302 or that failed to reduce the charge from the department of administration in accordance with 17-2-304;

(gg) an annual report from the board of investments in accordance with 17-5-1650(2);

(hh) a report on retirement system trust investments and benefits from the board of investments in accordance with 17-6-230;

(ii) recommendations for reductions in spending and related analysis, if required, from the office of budget and program planning in accordance with 17-7-140;

(jj) a statewide facility inventory and condition assessment from the department of administration in accordance with 17-7-202;

(kk) actuary reports and investigations for public retirement systems from the public employees' retirement board in accordance with 19-2-405;

(ll) a work report from the public employees' retirement board in accordance with 19-2-407;

(mm) annual actuarial reports and evaluations from the teachers' retirement board in accordance with 19-20-201;

(nn) reports from the state director of K-12 career and vocational and technical education, as requested, in accordance with 20-7-308;

(oo) 5-year state plan for career and technical education reports from the board of regents in accordance with 20-7-330;

(pp) a gifted and talented students report from the office of public instruction in accordance with 20-7-904;

(qq) status changes for at-risk students from the office of public instruction in accordance with 20-9-328;

(rr) status changes for American Indian students from the office of public instruction in accordance with 20-9-330;

(ss) reports regarding the Montana Indian language preservation program from the office of public instruction in accordance with 20-9-537;

(tt) proposals for funding community colleges from the board of regents in accordance with 20-15-309;

(uu) expenditures and activities of the Montana agricultural experiment station and extension service, as requested, in accordance with 20-25-236;

(vv) reports, if requested by the legislature, from the president of each of the units of the higher education system in accordance with 20-25-305;

(ww) reports, if prepared by a public postsecondary institution, regarding free expression activities on campus in accordance with 20-25-1506;

(xx) reports from the Montana historical society trustees in accordance with 22-3-107;

(yy) state lottery reports in accordance with 23-7-202;

(zz) a report from the division of banking and financial institutions, if required, from the department of administration in accordance with 32-11-306;

(aaa) state fund reports, if required, from the commissioner in accordance with 33-1-115;

(bbb) reports from the department of labor and industry in accordance with 39-6-101;

(ccc) victim unemployment benefits reports from the department of labor and industry in accordance with 39-51-2111;

(ddd) state fund business reports in accordance with 39-71-2363;

(eee) risk-based capital reports, if required, from the state fund in accordance with 39-71-2375;

(fff) child custody reports from the office of the court administrator in accordance with 41-3-1004;

(ggg) reports of remission of fine or forfeiture, respite, commutation, or pardon granted from the governor in accordance with 46-23-316;

(hhh) annual statewide public defender reports from the office of state public defender in accordance with 47-1-125;

(iii) a trauma care system report from the department of public health and human services in accordance with 50-6-402;

(jjj) an older Montanans trust fund report from the department of public health and human services in accordance with 52-3-115;

(kkk) Montana criminal justice oversight council reports in accordance with 53-1-216;

(lll) medicaid block grant reports from the department of public health and human services in accordance with 53-1-611;

(mmm) reports on the approval and implementation status of medicaid section 1115 waivers in accordance with 53-2-215;

(nnn) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(ooo) medicaid funding reports from the department of public health and human services in accordance with 53-6-110;

(ppp) proposals regarding managed care for medicaid recipients, if required, from the department of public health and human services in accordance with 53-6-116;

(qqq) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(rrr) a compliance and inspection report from the department of corrections in accordance with 53-30-604;

(sss) emergency medical services grants from the department of transportation in accordance with 61-2-109;

(ttt) annual financial reports on the environmental contingency account from the department of environmental quality in accordance with 75-1-1101;

(uuu) the Flathead basin commission report in accordance with 75-7-304;

(vvv) a report from the land board, if prepared, in accordance with 76-12-109;

(www) an annual state trust land report from the land board in accordance with 77-1-223;

(xxx) a noxious plant report, if prepared, from the department of agriculture in accordance with 80-7-713;

(yyy) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(zzz) reports on the allocation of renewable resources grants and loans for emergencies, if required, from the department of natural resources and conservation in accordance with 85-1-605;

(aaaa) water storage projects from the governor's office in accordance with 85-1-704;

(bbbb) upper Clark Fork River basin steering committee reports, if prepared, in accordance with 85-2-338;

(cccc) upland game bird enhancement program reports in accordance with 87-1-250;

(dddd) private land/public wildlife advisory committee reports in accordance with 87-1-269;

(eeee) a future fisheries improvement program report from the department of fish, wildlife, and parks in accordance with 87-1-272;

(ffff) license revenue recommendations from the department of fish, wildlife, and parks in accordance with 87-1-629;

(gggg) land information data reports from the state library in accordance with 90-1-404;

(hhhh) hydrocarbon and geology investigation reports from the bureau of mines and geology in accordance with 90-2-201;

(iiii) coal ash markets investigation reports from the department of commerce in accordance with 90-2-202;

(jjjj) an annual report from the pacific northwest electric power and conservation planning council in accordance with 90-4-403;

(kkkk) community property-assessed capital enhancements program reports from the Montana facility finance authority in accordance with 90-4-1303;

(llll) veterans' home loan mortgage loan reports from the board of housing in accordance with 90-6-604;

(mmmm) matching infrastructure planning grant awards by the department of commerce in accordance with 90-6-703(3); and

(nnnn) ~~treasure state~~ *Montana coal* endowment program reports from the department of commerce in accordance with 90-6-710;

(3) Reports to the legislature include reports made to an interim committee as follows:

(a) reports to the law and justice interim committee, including:

(i) findings of the domestic violence fatality review commission in accordance with 2-15-2017;

(ii) the report from the missing indigenous persons review commission in accordance with 2-15-2018;

(iii) reports from the department of justice and public safety officer standards and training council in accordance with 2-15-2029;

(iv) information on the Montana False Claims Act from the department of justice in accordance with 17-8-416;

(v) annual case status reports from the attorney general in accordance with 41-3-210;

(vi) office of court administrator reports in accordance with 41-5-2003;

(vii) statewide public safety communications system activities from the department of justice in accordance with 44-4-1606;

(viii) reports on the status of the crisis intervention team training program from the board of crime control in accordance with 44-7-110;

(ix) restorative justice grant program status and performance from the board of crime control in accordance with 44-7-302;

(x) reports on offenders under supervision with new offenses or violations from the department of corrections in accordance with 46-23-1016;

(xi) supervision responses grid reports from the department of corrections in accordance with 46-23-1028;

(xii) statewide public defender reports and information from the office of state public defender in accordance with 47-1-125;

(xiii) every 5 years, a percentage change in public defender funding report from the legislative fiscal analyst in accordance with 47-1-125;

(xiv) every 5 years, statewide public defender reports on the percentage change in funding from the office of state public defender in accordance with 47-1-125; and

(xv) a report from the quality assurance unit from the department of corrections in accordance with 53-1-211;

(b) reports to the state administration and veterans' affairs interim committee, including:

(i) a report that includes information technology activities and additional information from the information technology board in accordance with 2-17-512 and 2-17-513;

(ii) a report from the capitol complex advisory council in accordance with 2-17-804;

(iii) a report on the employee incentive award program from the department of administration in accordance with 2-18-1103;

(iv) a board of veterans' affairs report in accordance with 10-2-102;

(v) a report on grants to the Montana civil air patrol from the department of military affairs in accordance with 10-3-802;

(vi) annual reports on statewide election security from the secretary of state in accordance with 13-1-205;

(vii) a report regarding the youth voting program, if requested, from the secretary of state in accordance with 13-22-108;

(viii) a report from the commissioner of political practices in accordance with 13-37-120;

(ix) a report on retirement system trust investments from the board of investments in accordance with 17-6-230;

(x) actuarial valuations and other reports from the public employees' retirement board in accordance with 19-2-405 and 19-3-117;

(xi) actuarial valuations and other reports from the teachers' retirement board in accordance with 19-20-201 and 19-20-216;

(xii) a report on the reemployment of retired members of the teachers' retirement system from the teachers' retirement board in accordance with 19-20-732; and

(xiii) changes, if any, affecting filing-office rules under the Uniform Commercial Code from the secretary of state in accordance with 30-9A-527;

(c) reports to the children, families, health, and human services interim committee, including:

(i) performance data from the department of public health and human services in accordance with 2-15-2225;

(ii) quarterly reports on data requirements from the department of public health and human services in accordance with 5-12-303;

(iii) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(iv) Montana HELP Act workforce development reports from the department of public health and human services in accordance with 39-12-103;

(v) annual reports from the child and family ombudsman in accordance with 41-3-1211;

(vi) reports on activities and recommendations on child protective services activities, if required, from the child and family ombudsman in accordance with 41-3-1215;

(vii) reports on the out-of-state placement of high-risk children with multiagency service needs from the department of public health and human services in accordance with 52-2-311;

(viii) private alternative adolescent residential and outdoor programs reports from the department of public health and human services in accordance with 52-2-803;

(ix) an annual Montana parents as scholars program report from the department of public health and human services in accordance with 53-4-209;

(x) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(xi) a report concerning mental health managed care services, if managed care is in place, from the advisory council in accordance with 53-6-710;

(xii) quarterly medicaid reports related to expansion from the department of public health and human services in accordance with 53-6-1325;

(xiii) annual Montana developmental center reports from the department of public health and human services in accordance with 53-20-225; and

(xiv) annual children's mental health outcomes from the department of public health and human services in accordance with 53-21-508;

(xv) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(d) reports to the economic affairs interim committee, including:

(i) the annual state compensation insurance fund budget from the board of directors in accordance with 5-5-223 and 39-71-2363;

(ii) general marijuana regulation reports from the department of revenue in accordance with 16-12-110(3);

(iii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(iv) annual reports on complaints against physicians certifying medical marijuana use from the board of medical examiners in accordance with 16-12-532(4);

(v) an annual report on the administrative rate required from the department of commerce from the Montana heritage preservation and development commission in accordance with 22-3-1002;

(vi) state fund reports from the insurance commissioner, if required, in accordance with 33-1-115;

(vii) risk-based capital reports, if required, from the state fund in accordance with 33-1-115 and 39-71-2375;

(viii) annual reinsurance reports from the Montana reinsurance association board required in accordance with 33-22-1308;

(ix) reports from the department of labor and industry concerning board attendance in accordance with 37-1-107;

(x) annual reports on physician complaints related to medical marijuana from the board of medical examiners in accordance with 37-3-203;

(xi) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(xii) status reports on the special revenue account and fees charged as a funding source from the board of funeral service in accordance with 37-19-204;

(xiii) unemployment insurance program integrity act reports from the department of labor and industry in accordance with 39-15-706;

(xiv) status reports on the distressed wood products industry revolving loan program from the department of commerce in accordance with 90-1-503;

(e) reports to the education interim committee, including:

(i) reemployment of retired teachers, specialists, and administrators reports from the retirement board in accordance with 19-20-732;

(ii) a report on participation in the interstate compact on educational opportunity for military children in accordance with 20-1-231;

(iii) grow your own grant program reports from the commissioner of higher education in accordance with 20-4-601;

(iv) standards of accreditation proposals and economic impact statements from the board of public education in accordance with 20-7-101;

(v) advanced opportunity program reports from the board of public education in accordance with 20-7-1506;

(vi) progress on transformational learning plans from the board of public education in accordance with 20-7-1602;

(vii) budget amendments, if needed, from school districts in accordance with 20-9-161;

(viii) annual Montana resident student financial aid program reports from the commissioner of higher education in accordance with 20-26-105;

(ix) a historic preservation office report from the historic preservation officer in accordance with 22-3-423; and

(x) interdisciplinary child information agreement reports from the office of public instruction in accordance with 52-2-211;

(f) reports to the energy and telecommunications interim committee, including:

(i) the high-performance building report from the department of administration in accordance with 17-7-214;

(ii) an annual report from the consumer counsel in accordance with 69-1-222;

(iii) annual universal system benefits reports from utilities, electric cooperatives, and the department of revenue in accordance with 69-8-402;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501; and

(v) geothermal reports from the Montana bureau of mines and geology in accordance with 90-3-1301;

(g) reports to the revenue interim committee, including:

(i) use of the qualified endowment tax credit report from the department of revenue in accordance with 15-1-230;

(ii) tax rates for the upcoming reappraisal cycle from the department of revenue in accordance with 15-7-111;

(iii) gray water property tax abatement usage reports from the department of revenue in accordance with 15-24-3211;

(iv) information about job growth incentive tax credits from the department of revenue in accordance with 15-30-2361;

(v) student scholarship contributions from the department of revenue in accordance with 15-30-3112;

(vi) tax havens from the department of revenue in accordance with 15-31-322;

(vii) media production tax credit economic impact reports from the department of commerce in accordance with 15-31-1011;

(viii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(5);

(ix) complaints against physicians certifying use of medical marijuana from the board of medical examiners in accordance with 16-12-532(5); and

(x) reports that actual or projected receipts will result in less revenue than estimated from the office of budget and program planning, if necessary, in accordance with 17-7-140;

(h) reports to the transportation interim committee, including:

(i) biodiesel tax refunds from the department of transportation in accordance with 15-70-433;

(ii) cooperative agreement negotiations from the department of transportation in accordance with 15-70-450;

(iii) an annual alternative project delivery contracting report from the department of transportation in accordance with 60-2-119; and

(iv) a special fuels inspection report from the department of transportation in accordance with 61-10-154;

(i) reports to the environmental quality council, including:

(i) compliance and enforcement reports required in accordance with 75-1-314;

(ii) the state solid waste management and resource recovery plan, every 5 years, from the department of environmental quality in accordance with 75-10-111;

(iii) annual orphan share reports from the department of environmental quality in accordance with 75-10-743;

(iv) Libby asbestos superfund oversight committee reports in accordance with 75-10-1601;

(v) annual subdivision sanitation reports from the department of environmental quality in accordance with 76-4-116;

(vi) state trust land accessibility reports from the department of natural resources and conservation in accordance with 77-1-820;

(vii) biennial land banking reports and annual state land cabin and home site sales reports from the department of natural resources and conservation in accordance with 77-2-366;

(viii) biennially invasive species reports from the departments of fish, wildlife, and parks and natural resources and conservation in accordance with 80-7-1006;

(ix) annual upper Columbia conservation commission reports in accordance with 80-7-1026;

(x) annual invasive species council reports in accordance with 80-7-1203;

(xi) sand and gravel reports, if an investigation is completed, in accordance with 82-2-701;

(xii) annual sage grouse population reports from the department of fish, wildlife, and parks in accordance with 87-1-201;

(xiii) annual gray wolf management reports from the department of fish, wildlife, and parks in accordance with 87-1-901;

(xiv) biennial Tendoy Mountain sheep herd reports from the department of fish, wildlife, and parks in accordance with 87-2-702;

(xv) wildlife habitat improvement project reports from the department of fish, wildlife, and parks in accordance with 87-5-807; and

(xvi) annual sage grouse oversight team activities and staffing reports in accordance with 87-5-918;

(j) reports to the water policy interim committee, including:

(i) drought and water supply advisory committee reports in accordance with 2-15-3308;

(ii) total maximum daily load reports from the department of environmental quality in accordance with 75-5-703;

(iii) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501;

(v) renewable resource grant and loan program reports from the department of natural resources and conservation in accordance with 85-1-621;

(vi) quarterly adjudication reports from the department of natural resources and conservation and the water court in accordance with 85-2-281;

(vii) water reservation reports from the department of natural resources and conservation in accordance with 85-2-316;

(viii) instream flow reports from the department of fish, wildlife, and parks in accordance with 85-2-436; and

(ix) ground water investigation program reports from the bureau of mines and geology in accordance with 85-2-525;

(k) reports to the local government interim committee, including:

(i) sand and gravel, if an investigation is completed, in accordance with 82-2-701;

(ii) assistance to local governments on federal land management proposals from the department of commerce in accordance with 90-1-182; and

(iii) emergency financial assistance to local government reports from the department of commerce, if requests are made, in accordance with 90-6-703(2);

(l) reports to the state-tribal relations committee, including:

(i) reports from the missing indigenous persons review commission in accordance with 2-15-2018;

(ii) the Montana Indian language preservation program report from the state-tribal economic development commission in accordance with 20-9-537;

(iii) reports from the missing indigenous persons task force in accordance with 44-2-411

(iv) a decennial economic contributions and impacts of Indian reservations report from the department of commerce in accordance with 90-1-105;

(v) state-tribal economic development commission activities reports from the state-tribal economic development commission in accordance with 90-1-132; and

(vi) state-tribal economic development commission reports provided regularly by the state director of Indian affairs in accordance with 90-11-102.

(4) (a) Except as provided in subsections (4)(b) and (6) and unless otherwise required by law, a report made to the legislature in accordance with subsection (3) may be provided orally before September 1 of each year preceding the convening of a regular session of the legislature and in accordance with 5-11-210(1)(b).

(b) After receiving an oral report, an interim or administrative committee responsible for receiving the report may request a written report be filed with the legislature in accordance with 5-11-210(1)(a).

(c) This section may not be interpreted to preclude an interim or administrative committee from requesting additional information.

(5) Reports to the legislature include multistate compact and agreement reports including:

(a) multistate tax compact reports in accordance with 15-1-601;

(b) interstate compact on educational opportunity for military children reports in accordance with 20-1-230 and 20-1-231;

(c) compact for education reports in accordance with 20-2-501;

(d) Western regional higher education compact reports in accordance with 20-25-801;

(e) interstate insurance product regulation compact reports in accordance with 33-39-101;

(f) interstate medical licensure compact reports in accordance with 37-3-356;

(g) interstate compact on juveniles reports in accordance with 41-6-101;

(h) interstate compact for adult offender supervision reports in accordance with 46-23-1115;

(i) vehicle equipment safety compact reports in accordance with 61-2-201;

(j) multistate highway transportation agreement reports in accordance with 61-10-1101; and

(k) western interstate nuclear compact reports in accordance with 90-5-201.

(6) Reports, transfers, statements, assessments, recommendations and changes required under 17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, 23-7-202, 33-1-115, and 39-71-2375

must be provided as soon as the report is published and publicly available. Reports required in subsections (2)(a), (2)(gg), (2)(hh), and (3)(b)(ix) must be provided following issuance of reports issued under Title 5, chapter 13."

**Section 2.** Section 10-3-125, MCA, is amended to read:

"**10-3-125. Claims or defense against state action -- remedies -- limitations.** (1) A person or entity may assert a violation of 10-3-101 or 10-3-102 as a claim against a state, local, or interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any judicial proceeding.

(2) In any civil action based on this section, the court may grant:

(a) declaratory relief;

(b) injunctive relief;

(c) compensatory damages for pecuniary and nonpecuniary losses;

(d) reasonable attorney fees and costs; and

(e) any other appropriate relief.

(3) A person or entity may not bring an action to assert a claim under this section later than 2 years after the date that ~~it~~ *the person or entity* knew or could have known that a violation occurred."

**Section 3.** Section 13-3-205, MCA, is amended to read:

"**13-3-205. Adoption of standards for polling place accessibility -- rulemaking authority.** (1) The secretary of state, with advice from election administrators and individuals with disabilities ~~[and elderly individuals]~~, shall establish standards for accessibility of polling places.

(2) Standards for polling places approved pursuant to subsection (1) on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212."

**Section 4.** Section 15-30-2131, MCA, is amended to read:

"**15-30-2131. (Temporary) Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-2133;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) federal income tax paid within the tax year, not to exceed $5,000 for each taxpayer filing singly, head of household, or married filing separately or $10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-2114(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-2114(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-2143;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, ~~[or for which a credit was claimed under 15-30-2366,]~~ for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2). (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021.)"

**Section 5.** Section 19-13-115, MCA, is amended to read:

"**19-13-115. ~~Firemen's~~ *Firefighter's* association to advise board.** The Montana state ~~firemen's~~ *firefighter's* association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits of an individual member upon a written release of the member or the member's survivor."

**Section 6.** Section 30-10-103, MCA, is amended to read:

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

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

(b) The term does not include:

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

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

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

(3) (a) "Commodity" means:

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

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

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

(iv) foreign currency; and

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

(b) Commodity does not include:

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

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

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

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

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

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

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

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

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

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

(b) A federal covered adviser is not an investment adviser as defined in subsection (12).

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

(10) "Financial exploitation" means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable person; or

(b) an act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable person, to:

(i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property; or

(ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

(11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

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

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

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (12)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (12)(a) to others for compensation.

(c) The term does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer whose performance of services described in subsection (12)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

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

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

(vii) an engineer or teacher whose performance of the services described in subsection (12)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (12) as the commissioner may by rule or order designate.

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

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

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

(B) manages accounts or portfolios of clients;

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

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

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

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (13)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

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

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

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

(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

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

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

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

(19) "Qualified individual" means a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

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

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

(22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. The term includes an individual who supervises another individual who falls within this definition. [~~The~~ *The* term also includes but is not limited to the individual disclosed as the supervisor on a salesperson's form U4 of the uniform application for securities industry registration or ~~transfer.~~] *transfer*. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise falls within this definition.

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

(i) an issuer in:

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

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

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

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

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

(23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

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

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

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

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription;

(xii) transferable shares;

(xiii) investment contract;

(xiv) voting-trust certificate;

(xv) certificate of deposit for a security;

(xvi) viatical settlement purchase agreement;

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

(xviii) in general:

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

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

(C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection (24)(a)(xviii).

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

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

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

(27) "Vulnerable person" means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss;

(c) a person who has a developmental disability as defined in 53-20-102; or

(d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy."

**Section 7.** Section 30-10-1103, MCA, is amended to read:

"**30-10-1103. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

*(1) "Commissioner" has the meaning provided in 30-10-103.*

~~(1)~~*(2)* (a) "Monetary sanction" means any money, including penalties, disgorgement, and interest ordered to be paid as a result of an administrative or judicial action.

(b) The term does not include restitution.

~~(2)~~*(3)* "Original information" means information that is:

(a) derived from the independent knowledge or analysis of a whistleblower;

(b) not already known to the commissioner from any other source, unless the whistleblower is the original source of the information;

(c) not exclusively derived from an allegation made in an administrative or judicial hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and

(d) provided to the commissioner for the first time after March 24, 2021.

~~(3)~~*(4)* "Whistleblower" means an individual who, alone or jointly with others, provides the state or other law enforcement agency with information pursuant to the provisions set forth in this part, and the information relates to a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur."

**Section 8.** Section 37-31-101, MCA, is amended to read:

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

(1) "Affiliated" is an individual who owns more than 20% of or is employed 32 hours or more weekly at a school licensed under this chapter.

(2) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(3) "Barbering" means any of the following practices performed for payment, either directly or indirectly, on the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(4) "Barber nonchemical" means a person licensed under this chapter to engage in the practice of barbering nonchemical.

(5) "Barbering nonchemical" means the practice or teaching of barbering as provided in subsection (3) but excludes the use of chemicals to wave, straighten, color, bleach, or highlight hair.

(6) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

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

(8) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology.

(9) (a) "Cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

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

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

(11) "Electrologist" means a person licensed under this chapter to engage in the practice of electrology.

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

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

(13) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

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

~~(15) "Instructor" or "teacher" means a person licensed under 37-31-303.~~

~~(16)~~*(15)* "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

~~(17)~~*(16)* "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

~~(18)~~*(17)* "Place of residence" means a home and the following residences defined under 50-5-101:

(a) an assisted living facility;

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

(c) a hospice;

(d) a critical access hospital;

(e) a long-term care facility; or

(f) a residential treatment facility.

~~(19)~~*(18)* (a) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring.

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

~~(20)~~*(19)* "School" means a location approved by the board for training persons for licensure as provided for in 37-31-311.

~~(21)~~*(20)* "Student teacher" means an individual enrolled in a teacher training course as provided for under 37-31-301(1)(d).

~~(22)~~*(21)* "Teacher" means a person licensed under ~~37-31-305~~ *37-31-303*.

~~(23)~~*(22)* "Teacher training" means a 650-hour course prescribed by the board by rule under this chapter."

**Section 9.** Section 46-23-1016, MCA, is amended to read:

"**46-23-1016. Commitments to department -- report to sentencing court -- data.** (1) If the department does not honor a placement recommendation made by a district court judge when the judge sentences an offender pursuant to 46-18-201(3)(a)(iv), (3)(a)(vi), or (3)(a)(vii) and includes a placement recommendation, the department shall provide a rationale for the placement and written notice to the sentencing court within 40 days after the placement decision.

(2) The department shall collect and analyze data on:

(a) court placement recommendations and department placement decisions for offenders sentenced pursuant to 46-18-201(3)(a)(iv), (3)(a)(vi), or (3)(a)(vii); and

(b) the number and type of new criminal offenses committed by offenders under the department's supervision.

(3) (a) Beginning September 1, 2022, *and in accordance with 5-11-210,* the department shall collect data and report no later than September 1 of each year to the law and justice interim committee and the criminal justice oversight council on offenders who were under the department's supervision during the previous fiscal year and were:

(i) convicted of a new felony offense; or

(ii) revoked for a violation of the terms and conditions of a suspended or deferred sentence and the violation:

(A) is a compliance violation as defined in 46-18-203; or

(B) is not a compliance violation as defined in 46-18-203.

(b) The report must include the offenses or violations that triggered the report."

**Section 10.** Section 50-2-116, MCA, is amended to read:

"**50-2-116. Powers and duties of local boards of health.** (1) Except as provided in subsection (5), in order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) recommend to the governing body the appointment of a local health officer who is:

(i) a physician;

(ii) a person with a master's degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

(b) elect a presiding officer and other necessary officers;

(c) adopt bylaws to govern meetings;

(d) hold regular meetings at least quarterly and hold special meetings as necessary;

(e) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

(viii) education and training of health professionals; or

(ix) other public health measures as allowed by law;

(f) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;

(g) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(i) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(j) subject to the provisions of 50-2-130, propose for adoption by the local governing body necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are 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 department of environmental quality and must provide for appeal of variance decisions to the department of environmental quality as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) propose for adoption by the local governing body necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) propose for adoption by the local governing body regulations that do not conflict with 50-50-126 or 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, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) 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

(B) 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; and

(vi) to implement the public health laws;

(d) adopt rules necessary to implement and enforce regulations adopted by the local governing body; and

(e) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

(4) A directive, mandate, or order issued by a local board of health in response to a declaration of emergency or disaster by the governor as allowed in ~~[10-3-302 and]~~ 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.

(5) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive, mandate, or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance of actions described in subsections (5)(a) and (5)(b):

(i) require the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.

(6) The prohibition provided for in subsection (5)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public isolation order.

(7) The prohibitions provided for in subsection (5) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.

(8) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

**Section 11.** Section 50-2-118, MCA, is amended to read:

"**50-2-118. Powers and duties of local health officers.** (1) Except as provided in subsection (3), in order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

(a) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

(c) report communicable diseases to the department as required by rule;

(d) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

(e) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) A directive, mandate, or order issued by a local health officer in response to a declaration of emergency or disaster by the governor as allowed in ~~[10-3-302 and]~~ 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.

(3) A local health officer may not enforce a regulation, directive, mandate, or order or issue an order that is in violation of 50-2-116(5).

(4) The prohibitions provided for in 50-2-116(5) do not restrict a local health officer from exercising the local health officer's authority under 50-2-123 or this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders."

**Section 12.** Section 50-19-205, MCA, is amended to read:

"**50-19-205. Newborn screening advisory committee -- membership -- duties.** (1) There is a newborn screening advisory committee. The committee consists of 12 members appointed by the director of the department.

(2) (a) The director shall appoint the following voting members:

(i) two members who are persons affected by or family members of a person affected by a disorder tested for pursuant to 50-19-203;

(ii) two members who are physicians or nurse practitioners who are board-certified in obstetrics, pediatrics, family medicine, or neonatology;

(iii) one member who is a representative of a birthing center;

(iv) one member who is a representative of medicaid or the insurance industry;

(v) one member who is a representative of an advocacy association regarding newborns with medical conditions or rare disorders;

(vi) one member who is a medical geneticist or who has at least 5 years of experience working in a testing laboratory; and

(vii) one member who works in a tribal health care system.

(b) The director shall appoint the following department employees as nonvoting members:

(i) the chief medical director;

(ii) a representative of the newborn screening program; and

(iii) a representative of the laboratory services bureau.

(3) (a) Except as provided in subsection (3)(b), each voting committee member shall serve a staggered 3-year term and is subject to reappointment for one succeeding term.

(b) The director shall appoint the first ~~[nine]~~ *nine* voting members to an initial term of 1, 2, or 3 years so that the terms of no more than four members expire in any given year.

(4) The committee shall meet at least two times each year.

(5) The committee shall report its findings to the director at least once a year, if applicable, including providing recommendations that the department initiate rulemaking to add an additional metabolic or genetic disorder to the newborn screening protocol. In making recommendations to the department, the committee shall use federally recognized national standards for newborn screening, including the recommended uniform screening panel developed by the health resources and services administration of the United States department of health and human services.

(6) Members of the committee are not entitled to compensation for their services, but they are entitled to a mileage allowance, as provided in 2-18-503, and travel and meal expenses, as provided in 2-18-501 and 2-18-502.

(7) The committee shall gather information on recent developments in testing technology, investigate staff and equipment requirements of new tests, and perform other activities related to newborn screening. The committee may make recommendations to the director regarding conditions that should be added to the newborn screening panel.

(8) The committee is attached to the department of public health and human services for administrative purposes, and the department shall provide staff support to the committee.

(9) The committee shall give priority to reviewing Krabbe disease."

**Section 13.** Section 50-20-709, MCA, is amended to read:

"**50-20-709. Reporting on chemical abortions.** (1) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each chemical abortion performed must be made to the department on forms prescribed

by the department. The reports must be completed by the facility in which the abortion-inducing drug was provided, signed by the qualified medical practitioner who provided the abortion-inducing drug, and transmitted to the department within 15 days after each reporting month.

(2) A report must include, at a minimum, the following information:

(a) identification of the qualified medical practitioner who provided the abortion-inducing drug;

(b) whether the chemical abortion was completed at the facility in which the abortion-inducing drug was provided or at an alternative location;

(c) the referring medical practitioner, agency, or service, if any;

(d) the pregnant woman's county, state, and country of residence;

(e) the pregnant woman's age and race;

(f) the number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;

(g) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm the gestational age. The report must include the date of the ultrasound and gestational age determined on that date.

(h) the abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;

(i) preexisting medical conditions of the pregnant woman that would complicate the pregnancy, if any;

(j) whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding, the date and results of the follow-up examination, and what reasonable efforts were made by the qualified medical practitioner to encourage the woman to return for a follow-up examination if the woman did not;

(k) whether the woman suffered any complications and, if so, what specific complications arose and what follow-up treatment was needed; and

(l) the amount billed to cover the treatment for specific complications, including whether the treatment was billed to medicaid, private insurance, private pay, or another method, including charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and other costs for treatment rendered.

(3) Reports required under this section may not contain:

(a) the name of the pregnant woman;

(b) common identifiers, such as a social security number or driver's license number; or

(c) other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a pregnant woman who has obtained or seeks to obtain a chemical abortion.

(4) A qualified medical practitioner who provides an abortion-inducing drug to a pregnant woman who knows that the woman experiences, during or after the use of the abortion-inducing drug, an adverse event shall provide a written report of the adverse event within 3 days of the event to the United States food and drug administration via the medwatch reporting system, to the department, and to the state board of medical examiners.

(5) (a) A medical practitioner, qualified medical practitioner, associated medical practitioner, or other health care provider who treats a woman, either contemporaneously to or at any time after a chemical abortion, for an adverse event or complication related to a chemical abortion shall make a report of the adverse event to the department on forms prescribed by the department. The reports must be completed by the facility in which the adverse event or complication treatment was provided, signed by the medical practitioner,

qualified medical practitioner, associated medical practitioner, or other health care provider who treated the adverse event or complication, and transmitted to the department within 15 days after each reporting month.

(b) The report must include, at a minimum:

(i) the information required under subsections (2)(a) through (2)(j) and (2)(l); and

(ii) information about the specific complications that arose, whether an emergency transfer was required, and whether any followup treatment was needed, including whether additional drugs or medications were provided in order to complete the abortion.

(6) The department shall ~~prepare~~ *provide, in accordance with 5-11-210,* a comprehensive annual statistical report for the legislature based on the data gathered from reports under this section. The aggregated data must also be made available to the public by the department in a downloadable format.

(7) The department shall summarize aggregate data from the reports required under this part and submit the data to the U.S. centers for disease control and prevention for the purpose of inclusion in the annual vital statistics report.

(8) Reports filed pursuant to this section must be deemed public records and must be available to the public in accordance with the confidentiality and public records reporting laws of this state. Original copies of all reports filed under this section must be available to the state board of medical examiners, state board of pharmacy, state law enforcement officials, and child protective services for use in the performance of their official duties.

(9) Absent a valid court order or judicial subpoena, the department or any other state department, agency, office, or employee may not compare data concerning chemical abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, the comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain a chemical abortion.

(10) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain a chemical abortion may not be maintained by the department or any other state department, agency, office, employee, or contractor.

(11) The department shall communicate the reporting requirements of this section to all medical professional organizations, medical practitioners, and facilities operating in the state."

**Section 14.** Section 61-5-129, MCA, is amended to read:

"**61-5-129. (Temporary) REAL ID-compliant driver's license or identification card -- voluntary application.** (1) The department shall issue a Montana driver's license or identification card that complies with the requirements of the federal REAL ID Act of 2005, Public Law 109-13, to each qualifying applicant.

(2) (a) When required to obtain a Montana driver's license or identification card, a person may choose to apply for either a standard driver's license or identification card, or for a REAL ID-compliant driver's license or REAL ID-compliant identification card.

(b) A person may not hold a valid standard driver's license or identification card and a valid REAL ID-compliant driver's license or identification card at the same time.

(3) (a) A REAL ID-compliant driver's license issued pursuant to this section is subject to the other requirements of obtaining, renewing, and using a standard driver's license issued pursuant to this chapter.

(b) A REAL ID-compliant identification card issued pursuant to this section is subject to the other requirements of obtaining, renewing, and using a standard identification card issued pursuant to Title 61, chapter 12, part 5, and this chapter.

(4) (a) In addition to the fees charged to apply for or renew a standard driver's license under 61-5-111(6) and the fees charged to apply for a standard identification card under 61-12-504, the department may charge the following additional fees~~:~~

~~(i)~~ for a person who is applying for a REAL ID-compliant driver's license or identification card during or prior to a renewal period specified in 61-5-111(3)(c), the additional fee is $25~~; and~~

~~(ii) for a person who renews a standard driver's license or a standard identification card under 61-5-111(3)(c) between June 1, 2017, through December 31, 2017, and is applying for a REAL ID-compliant driver's license or identification card between January 1, 2018, and June 30, 2018, the additional fee is $25~~.

(b) The fees collected under this subsection (4) must be deposited in the state special revenue fund to be used to fund the equipment and staffing necessary to provide REAL ID-compliant driver's licenses and identification cards. (Void on occurrence of contingency--sec. 8, Ch. 443, L. 2017.)"

**Section 15.** Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-1002 within the time period specified in ~~61-8-1002~~ *61-8-1011*, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-1010. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-1002~~ *61-8-1009*, the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-1002 within the time period specified in ~~61-8-1002~~ *61-8-1011*, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the

court that a probationary driver's license be issued subject to the requirements of 61-8-1010. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-1002, the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-1002 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-1008, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**Section 16.** Section 69-3-904, MCA, is amended to read:

"**69-3-904. Commission review and determination of rate increases or decreases.** (1) When a small telecommunications provider proposes a rate increase or decrease, the commission shall review and determine the rates pursuant to the applicable procedures in this chapter if:

(a) the affected subscribers have successfully petitioned for commission review as described in 69-3-906;

(b) the small telecommunications provider requests the commission to review and determine the rates; or

(c) by the 60th day following notice of the proposed increase or decrease, the consumer counsel petitions the commission to review and determine the rates.

(2) An order of the commission issued under this section establishes the effective rate for the regulated telecommunications services covered by the order. Rates established by commission order may not be increased for a period of 6 months, except as ordered by the commission.

(3) The order of the commission is subject to review ~~pursuant to part 4 of this chapter~~."

**Section 17.** Section 87-2-124, MCA, is amended to read:

"**87-2-124. Option to direct limited drawing refunds to block management program.** A person who participates in a limited drawing but is not successful in the drawing may opt, upon application, to direct that the refund the person is eligible to receive instead be deposited in the hunting access account established in 87-1-290 and used for the purpose of funding the block management program established ~~by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303~~ *in 87-1-265*."

**Section 18.** Section 87-6-415, MCA, is amended to read:

"**87-6-415. Failure to obtain landowner's permission for hunting.** (1) A person may not hunt or attempt to hunt furbearers, game animals, migratory game birds, nongame wildlife, predatory animals, upland game

birds, or wolves on private property without first obtaining permission of the landowner, the lessee, or their agents.

(2) A person who violates this section shall, upon conviction for a first offense, be fined not less than $135 or more than $500.

(3) A person convicted of a second or subsequent offense of hunting on private property without obtaining permission of the landowner within 5 years shall be fined not less than $500 or more than $1,000.

(4) In addition, the person, upon conviction under subsection (3) or forfeiture of bond or bail:

(a) shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for not less than 12 months or more than 3 years from the date of conviction or forfeiture ~~[of bond or bail]~~ *of bond or bail*; and

(b) may be ordered to make restitution for property damage resulting from the violation in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(5) For the purposes of this section, the term "hunt" has the same meaning as provided in 87-6-101 and includes entering private land to:

(a) retrieve wildlife; or

(b) access public land to hunt."

**Section 19. Directions to code commissioner.** (1) Wherever a reference to 5-11-210 appears in legislation enacted by the 2023 legislature and requires a new report to the legislature, the code commissioner is directed to include the report under the appropriate interim committee as listed in 5-11-222.

(2) Wherever a reference to 5-11-210 is repealed or stricken in legislation enacted by the 2023 legislature, the code commissioner is directed to strike that report from 5-11-222.

**Section 20. Directions to code commissioner.** The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 68th legislature and previous legislatures.

Approved April 19, 2023

# CHAPTER NO. 167

[HB 112]

AN ACT GENERALLY REVISING HUMAN TRAFFICKING AND PROSTITUTION LAWS; PROVIDING FOR THE CRIMES OF SEX TRAFFICKING, LABOR TRAFFICKING, AGGRAVATED SEX TRAFFICKING, AND CHILD SEX TRAFFICKING; AMENDING SECTIONS 20-7-1321, 27-1-755, 27-2-216, 40-4-219, 41-3-102, 44-5-311, 45-1-205, 45-2-211, 45-5-601, 45-5-701, 45-5-702, 45-5-703, 45-5-705, 45-5-706, 45-5-707, 45-5-708, 45-5-709, 45-5-710, 45-8-405, 46-16-226, 46-18-104, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-219, 46-18-222, 46-18-231, 46-18-608, 46-23-502, 46-23-1011, AND 61-8-818, MCA; REPEALING SECTIONS 45-5-602,

45-5-603, 45-5-604, AND 45-5-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-7-1321, MCA, is amended to read:

"**20-7-1321. Employment assistance for current or former school employees, contractors, and volunteers engaged in sexual misconduct prohibited.** (1) Except as provided in subsection (2), a person who is an officer, trustee, employee, agent, or contractor of a school, school district, county superintendent of schools, or the state superintendent of public instruction and who knows or has probable cause to believe that a current or former school employee, contractor, or agent has committed or has attempted, solicited, or conspired to commit an act with a child or enrolled student that constitutes a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601, ~~45-5-602, 45-5-603,~~ 45-5-625, 45-5-702, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]* may not assist that school employee, contractor, or agent in obtaining new employment apart from the routine transmission of administrative and personnel files.

(2) Subsection (1) does not apply if:

(a) the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged violation;

(b) the information has been properly reported to any other authorities as required by the laws of the United States, the state, or any political subdivision of the state, including but not limited to reporting required by Title 41, chapter 3, part 2, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., and the regulations implementing that title under Title 34, part 106, Code of Federal Regulations, or any succeeding regulations; and

(c) (i) a peace officer, city attorney, or county attorney with jurisdiction over the alleged misconduct has notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent committed or attempted, solicited, or conspired to commit an act with a child or pupil constituting a violation of the offenses listed in subsection (1);

(ii) the school employee, contractor, or agent has been charged with and acquitted or otherwise exonerated of the alleged violation; or

(iii) there have been no charges filed against the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(3) This section applies to current or former school employees, contractors, and agents of both public and nonpublic schools."

**Section 2.** Section 27-1-755, MCA, is amended to read:

"**27-1-755. Civil action -- human trafficking victim.** (1) A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]* for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney fees and costs.

(3) An action under this section must be commenced not later than 10 years after the later of:

(a) the date on which the victim no longer was subject to human trafficking; or

(b) the date on which the victim reached 18 years of age.

(4) This section does not preclude any other remedy available to the victim under federal or state law.

(5) For the purposes of this section, the term "human trafficking" has the meaning provided in 45-5-701."

**Section 3.** Section 27-2-216, MCA, is amended to read:

"**27-2-216. Tort actions -- childhood sexual abuse.** (1) Except as provided in subsection (4), an action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse against the individual who committed the acts must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, ~~45-5-602, 45-5-603,~~ 45-5-625, 45-5-627, ~~45-5-704,~~ *45-5-702,* 45-5-705, *45-5-706, [section 19],* or prior similar laws in effect at the time the act occurred.

(3) Except as provided in subsection (5), in an action for recovery of damages for liability against any entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff, the action must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(4) A claim for damages described in subsection (1) that would otherwise be barred because the applicable statute of limitations has expired may be commenced within 1 year of May 7, 2019, if the individual who committed the act of childhood sexual abuse against the plaintiff is alive at the time the action proceeds or is commenced and:

(a) has admitted to the commission of the act of childhood sexual abuse against the plaintiff in either a written and signed statement or a statement recorded by audio or video; or

(b) (i) has made one or more statements admitting to the commission of the act of childhood sexual abuse against the plaintiff under oath or in a plea agreement; or

(ii) has been convicted of an offense listed in subsection (2) in which the plaintiff was the victim.

(5) (a) A claim for damages described in subsection (3) that would otherwise be barred because the applicable statute of limitations has expired must be revived if the court concludes that the entity against whom the action is commenced, based upon documents or admissions by employees, officers, directors, officials, volunteers, representatives, or agents of the entity, knew, had reason to know, or was otherwise on notice of any unlawful sexual conduct by an employee, officer, director, official, volunteer, representative, or agent and failed to take reasonable steps to prevent future acts of unlawful sexual conduct.

(b) A cause of action in which allegations described in subsection (5)(a) are made but that would otherwise be barred by the statute of limitations in subsection (3) may be commenced within 1 year of May 7, 2019.

(6) As used in subsection (5), "admissions" include:

(a) a criminal conviction of an employee, officer, director, official, volunteer, representative, or agent of the entity for an offense of childhood sexual abuse;

(b) a written statement;

(c) a documented or recorded oral statement; or

(d) statements made in:

(i) a plea agreement or change of plea hearing;

(ii) a trial; or

(iii) a settlement agreement.

(7) The provisions of 27-2-401 apply to this section."

**Section 4.** Section 40-4-219, MCA, is amended to read:

"**40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.

(a) In determining how a proposed change will affect the child, the court shall consider the potential impact of the change on the criteria in 40-4-212 and whether:

(i) the parents agree to the amendment;

(ii) the child has been integrated into the family of the petitioner with consent of the parents;

(iii) the child is 14 years of age or older and desires the amendment; or

(iv) one parent has willfully and consistently:

(A) refused to allow the child to have any contact with the other parent; or

(B) attempted to frustrate or deny contact with the child by the other parent.

(b) If one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria in 40-4-212 and subsection (1)(a):

(i) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

(ii) the reasons of each parent for seeking or opposing the change of residence;

(iii) whether the parent seeking to change the child's residence has demonstrated a willingness to promote the relationship between the child and the nonrelocating parent; and

(iv) whether reasonable alternatives to the proposed change of residence are available to the parent seeking to relocate.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(a)(iv) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) ~~aggravated promotion of prostitution of a~~ child *sex trafficking*, as described in ~~45-5-603(1)(b)~~*[section 19]*;

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in 45-5-215.

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

**Section 5.** 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, or 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;

(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; or

(C) any form of child sex trafficking or human trafficking.

(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).

(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) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "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.

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

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 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.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "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.

(19) "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.

(20) "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.

(21) "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.

(22) (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.

(23) (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, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (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.

(25) "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.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "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.

(28) "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.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, 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.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 ~~through 45-5-603~~;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging ~~sexual servitude~~ *sex trafficking* as described in ~~45-5-704 or~~ *45-5-702,* 45-5-705*, 45-5-706, or [section 19]*.

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with

the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "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.

(34) (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 (34), "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.

(35) "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 6.** Section 44-5-311, MCA, is amended to read:

"**44-5-311. Nondisclosure of information about victim.** (1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]* unless disclosure is of the location of the

crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause."

**Section 7.** Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) Except as provided in subsection (1)(c) or (9), a prosecution for a felony offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507(4) or (5), 45-5-625, or 45-5-627 may be commenced within 10 years after it is committed.

(c) A prosecution for an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, ~~45-5-602, 45-5-603,~~ 45-5-625, 45-5-627, ~~45-5-704, or~~ *45-5-702,* 45-5-705*, 45-5-706, or [section 19]* may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer

discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.

(10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.

(11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed."

**Section 8.** Section 45-2-211, MCA, is amended to read:

"**45-2-211. Consent as defense.** (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception;

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to; or

(e) for offenses under 45-5-502, 45-5-503, 45-5-508, 45-5-601, ~~45-5-602, 45-5-603,~~ or Title 45, chapter 5, part 7, it is given by a person who the offender knew or reasonably should have known was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred."

**Section 9.** Section 45-5-601, MCA, is amended to read:

"**45-5-601. Prostitution -- patronizing prostitute -- exception.** (1) Except as provided in subsection (2)(a), the offense of prostitution is committed if a person engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute may be convicted of prostitution only if the prostitute engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether the compensation is received or to be received or paid or to be paid. A prostitute who is convicted of prostitution may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid. Except as provided in ~~subsections (3) and (4)~~ *subsection (3)*, a patron who is convicted of prostitution shall for the first offense be fined an amount not to exceed ~~$1,000~~ *$5,000* or be imprisoned for a term not to exceed ~~1 year~~ *5 years*, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed ~~5~~ *10* years, or both.

(3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(4) If the person patronized was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the patron offender was 18 years of age or older at the time of the offense and knew or reasonably should have known that the person patronized was a victim of human trafficking or was subjected to force, fraud, or coercion, the patron offender:~~

~~(a) shall be punished by imprisonment in a state prison for a term of up to 10 years; and~~

~~(b) may be fined an amount not to exceed $25,000.~~

~~(5)~~*(4)* It is not a violation of ~~45-5-602, 45-5-603, or~~ this section for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23.

*(5) It is not a defense in a prosecution under this section that a child consented to engage in sexual activity.*

*(6) It is not a defense in a prosecution under this section that a defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is imposed.*"

**Section 10.** Section 45-5-701, MCA, is amended to read:

"**45-5-701. Definitions.** As used in this part, the following definitions apply:

(1) "Adult" means a person 18 years of age or older.

(2) "Coercion" means:

(a) the use or threat of force against, abduction of, serious harm to, or physical restraint of a person;

(b) the use of a plan, pattern, or statement with intent to cause a person to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a person;

(c) the abuse or threatened abuse of law or legal process;

(d) controlling or threatening to control a person's access to any substance defined as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2;

(e) the actual or threatened destruction or taking of a person's identification document or other property;

(f) the use of debt bondage;

(g) the use of a person's physical or mental impairment when the impairment has a substantial adverse effect on the person's cognitive or volitional function; or

(h) the commission of civil or criminal fraud.

(3) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.

(4) "Debt bondage" means inducing a person to provide:

(a) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) labor or services in payment toward or satisfaction of a real or purported debt if:

(i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) "Human trafficking" means the commission of an offense under 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]*.

(6) "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

(7) "Labor or services" means activity having economic value.

*(8) "Prostitution" has the meaning provided in 45-5-601.*

~~(8)~~*(9)* "Serious harm" means physical or nonphysical harm, including psychological, economic, or reputational harm to a person that would compel a reasonable person of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

~~(9)~~*(10)* "Sexual activity" means any sex act or simulated sex act intended to arouse or gratify the sexual desire of any person. The term includes a sexually explicit performance.

*(11) "Sexual contact" has the meaning provided in 45-2-101.*

~~(10)~~*(12)* "Sexually explicit performance" means a live, public, private, photographed, recorded, or videotaped act or simulated act intended to arouse or gratify the sexual desire of any person."

**Section 11.** Section 45-5-702, MCA, is amended to read:

"**45-5-702. ~~Trafficking of persons~~ *Sex trafficking*.** (1) A person commits the offense of *sex* trafficking ~~of persons~~ if the person purposely or knowingly:

*(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or prostitution business;*

*(b) procures an individual for a house of prostitution or prostitution business or procures a place in a house of prostitution or prostitution business for an individual;*

*(c) encourages, induces, or otherwise purposely causes another person to become or remain a prostitute;*

*(d) solicits clients for another person who is a prostitute;*

*(e) procures a prostitute for a patron;*

*(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;*

*(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means;*

~~(a)~~*(h)* recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that

the person will be subjected to ~~involuntary servitude or sexual servitude~~ *prostitution*; or

~~(b)~~*(i)* benefits, financially or by receiving anything of value, from facilitating any conduct described in ~~subsection~~ *subsections* (1)(a) *through (1)(h)* ~~or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude~~.

(2) ~~(a) Except as provided in subsections (2)(b) and (2)(c), a~~ *A* person convicted of the offense of *sex* trafficking ~~of persons~~ shall be imprisoned in the state prison for a term of not ~~more than 15 years~~ *less than 2 years or more than 20 years*, fined an amount not to exceed $50,000, or both.

~~(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined an amount not to exceed $100,000, or both, if the victim was a child.~~

~~(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed $75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide.~~"

**Section 12.** Section 45-5-703, MCA, is amended to read:

"**45-5-703. ~~Involuntary servitude~~ *Labor trafficking*.** (1) A person commits the offense of ~~involuntary servitude~~ *labor trafficking* if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) ~~(a)~~ Except as provided in subsection ~~(2)(b)~~ *(3)*, a person convicted of the offense of ~~involuntary servitude~~ *labor trafficking* shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed $50,000, or both.

~~(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 50 years and may be fined not more than $100,000 if:~~

~~(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or~~

~~(ii) the victim was a child.~~

*(3) If the victim is less than 18 years of age, the offender shall be imprisoned in the state prison for a term of not less than 4 years or more than 50 years, fined an amount not to exceed $100,000, or both.*"

**Section 13.** Section 45-5-705, MCA, is amended to read:

"**45-5-705. Patronizing victim of ~~sexual servitude~~ *sex trafficking*.** (1) A person commits the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking* if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity~~:~~

~~(a)~~ that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of ~~sexual servitude~~ *sex trafficking*~~; or~~

~~(b) with a child~~.

(2) ~~(a)~~ Except as provided in subsection ~~(2)(b)~~ *(3)*, a person convicted of the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking* shall*:*

*(a) for the first offense,* be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed $50,000, or both~~.~~*; or*

*(b) for a second or subsequent offense, be imprisoned in the state prison for a term of not less than 2 years or more than 15 years, fined an amount not to exceed $50,000, or both.*

*(3) (a)* If the individual patronized was a child *and the patron was 18 years of age or older*, a person convicted of the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking*, whether or not the person believed the child was an adult~~, shall~~*:*

*(i) shall* be imprisoned in the state prison for a term of ~~not more than 25~~ *100* years.~~and fined an amount not to exceed $75,000.~~ *The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 48-18-222, and during the first 25 years of imprisonment the offender is not eligible for parole.*

*(ii) shall be fined an amount not to exceed $50,000; and*

*(iii) must be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.*

*(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.*

*(4) It is not a defense in a prosecution under this section:*

*(a) that a child consented to engage in commercial sexual activity; or*

*(b) that the defendant believed that the child was an adult. Absolute liability, as provided in 45-2-104, is imposed.*"

**Section 14.** Section 45-5-706, MCA, is amended to read:

"**45-5-706. ~~Aggravating circumstance~~ *Aggravated sex trafficking*.** (1) *A person commits the offense of aggravated sex trafficking if, during the commission of the offense of sex trafficking, the person purposely or knowingly:*

*(a) uses fraud, coercion, or deception to control an adult to engage in prostitution; or*

*(b)* ~~An aggravating circumstance during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705 occurs when the defendant recruited, enticed, or obtained~~ *recruits, entices, or obtains* the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, ~~or persons subjected to~~ human trafficking *victims, or victims of* domestic ~~violence,~~ or sexual ~~assault~~ *violence*.

(2) ~~If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705, the defendant may be imprisoned for up to 5 years in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this section must run consecutively to the sentence provided for the underlying offense.~~ *A person convicted of the offense of aggravated sex trafficking shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years, fined an amount not to exceed $50,000, or both. The exceptions provided in 46-18-222(5) and (6) do not apply.*"

**Section 15.** Section 45-5-707, MCA, is amended to read:

"**45-5-707. Property subject to forfeiture -- human trafficking.** (1) (a) A person commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years.

(b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]*.

(c) The following property is subject to criminal forfeiture under this section:

(i) money, raw materials, products, equipment, and other property of any kind;

(ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);

(iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;

(iv) books, records, research products and materials, formulas, microfilm, tapes, and data;

(v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;

(vi) negotiable instruments, securities, and weapons; and

(vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in subsection (1)(b).

(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property for the purposes described in subsection (1)(b).

(4) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation as described in subsection (1)(b) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used under the circumstances described in subsection (1)(b).

(5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure of the property involved.

(6) The procedure for forfeiture proceedings in Title 44, chapter 12, part 2, applies to property seized pursuant to this section.

(7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from the sale of property seized under this section must be distributed to the holders of security interests who have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any, must be deposited in the crime victims compensation account provided for in 53-9-113."

**Section 16.** Section 45-5-708, MCA, is amended to read:

"**45-5-708. Past sexual behavior of victim.** In a prosecution for an offense under 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]* or a civil action under 27-1-755, evidence concerning a specific instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior is inadmissible unless the evidence is admitted in accordance with 45-5-511(2) or offered by the prosecution to prove a pattern of human trafficking by the defendant."

**Section 17.** Section 45-5-709, MCA, is amended to read:

"**45-5-709. Immunity of child -- sex therapy participants.** (1) A person is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution, ~~promoting prostitution,~~ *sex trafficking or prior similar laws in effect at the time the act occurred,* or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

(2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution if the person was a child at the time of the offense.

(3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3, and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.

(4) Subsections (1) through (3) do not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter 5, for patronizing a prostitute.

(5) It is not a violation of this part for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23."

**Section 18.** Section 45-5-710, MCA, is amended to read:

"**45-5-710. Affirmative defense.** A person charged with prostitution, ~~promoting prostitution,~~ *sex trafficking or prior similar laws in effect at the time the act occurred,* or another nonviolent offense committed as a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking."

**Section 19. Child sex trafficking.** (1) A person commits the offense of child sex trafficking by purposely or knowingly:

(a) committing the offense of sex trafficking with a child; or

(b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, enticing, or using a child for the purposes of commercial sexual activity.

(2) (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a) except as provided in 46-18-222(1) through (4). During the first 25 years of imprisonment, the offender is not eligible for parole. The exceptions provided in 46-18-222(5) and (6) do not apply.

(b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:

(i) may be fined an amount not to exceed $50,000; and

(ii) if released after the mandatory minimum period of imprisonment, is subject to supervision by the department of corrections for the remainder

of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(3) It is not a defense in a prosecution under this section:

(a) that a child consented to engage in commercial sexual activity; or

(b) that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is imposed.

**Section 20. Evidence in cases of sex trafficking, aggravated sex trafficking, or child sex trafficking.** (1) In a case that involves a question of whether a place is a house of prostitution, evidence of the following, in addition to all other admissible evidence, is admissible:

(a) the general reputation of the place;

(b) the reputations of the place's residents and the nonresidents who frequent the place; and

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against the person's spouse is admissible under 45-5-702, 45-5-706, or [section 19].

**Section 21.** Section 45-8-405, MCA, is amended to read:

"**45-8-405. Pattern of criminal street gang activity.** (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, or attempt, the adjudication as a delinquent youth for the commission, attempt, or solicitation, or the conviction of two or more of the offenses listed in subsection (2) within a 3-year period, which offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) assault with a weapon, as defined in 45-5-213;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) robbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) aggravated ~~promotion of prostitution~~ *sex trafficking*, as defined in ~~45-5-603~~ *45-5-706*;

*(i) child sex trafficking, as defined [section 19];*

~~(i)~~*(j)* criminal mischief, as defined in 45-6-101;

~~(j)~~*(k)* arson, as defined in 45-6-103;

~~(k)~~*(l)* burglary, as defined in 45-6-204;

~~(l)~~*(m)* theft, as defined in 45-6-301;

~~(m)~~*(n)* forgery, as defined in 45-6-325;

~~(n)~~*(o)* tampering with witnesses and informants, as defined in 45-7-206;

~~(o)~~*(p)* bringing armed individuals into the state, as defined in 45-8-106;

~~(p)~~*(q)* unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

~~(q)~~*(r)* carrying a concealed weapon, as defined in 45-8-316;

~~(r)~~*(s)* possession of a deadly weapon by a prisoner, as defined in 45-8-318;

~~(s)~~*(t)* possession of a destructive device, as defined in 45-8-334;

~~(t)~~*(u)* possession of explosives, as defined in 45-8-335;

~~(u)~~*(v)* possession of a sawed-off firearm, as defined in 45-8-340;

~~(v)~~*(w)* the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

~~(w)~~*(x)* use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

**Section 22.** Section 46-16-226, MCA, is amended to read:

"**46-16-226. Definitions.** As used in 46-16-226 through 46-16-229, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, ~~45-5-603, or~~ 45-5-625*, 45-5-705(1)(b), 45-5-706, or [section 19]*.

(3) "Violent offense" means 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, 45-5-210, 45-5-212, 45-5-213, 45-5-215, 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132."

**Section 23.** Section 46-18-104, MCA, is amended to read:

"**46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) (a) "Crime of violence" means:

(i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender; or

(iii) an offense under:

(A) 45-5-215;

(B) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

(C) 45-5-503, except as provided in subsection (2)(b) of this section;

(D) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense;

(E) 45-5-508;

~~(F) 45-5-603;~~

~~(G)~~*(F)* 45-5-702;

~~(H)~~*(G)* 45-5-703;

~~(I) 45-5-704; or~~

~~(J)~~*(H)* 45-5-705*;*

*(I) 45-5-706; or*

*(J) [section 19]*.

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

(4) "Restorative justice" has the meaning provided in 44-7-302."

**Section 24.** Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding

of guilty to one or more felony offenses, except as provided in subsection (1)(d), the district court may request and direct the probation and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsection (1)(b), (1)(c), (1)(d), or (1)(e) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report, if requested, must be available to the court within 30 business days of the plea or the verdict or finding of guilty.

(iii) If a presentence investigation report has been requested, the district court shall consider the presentence investigation report prior to sentencing.

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b) or (2)(c),~~ 45-5-625, 45-5-627, ~~45-5-704,~~ 45-5-705, *45-5-706, [section 19],* or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the defendant unless the defendant is sentenced under 46-18-219. The evaluation must include:

(A) 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;

(B) an identification of the level of risk the defendant presents to the community using the standards established in 37-1-139; and

(C) the defendant's needs.

(ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who has a license endorsement as provided for in 37-1-139. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

(iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs.

(ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, licensed clinical social worker, licensed clinical professional counselor, licensed marriage and family therapist, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

(iii) All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to

the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not contained in a plea agreement, the court shall order a presentence investigation.

(e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

(4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

(a) a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or

(b) an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029."

**Section 25.** Section 46-18-201, MCA, is amended to read:

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

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

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

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

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner that would result in an

offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);

(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

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

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

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

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

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b),~~ *[section 19],* and 45-5-625(4); or

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

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

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

(vii) any combination of subsection (2) and this subsection (3)(a).

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

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred

imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

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

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

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

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

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

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

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

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

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-1002, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

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

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

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

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

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

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the

license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

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

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

**Section 26.** Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b), or~~ 45-5-625(4), *or [section 19],* and describing the exhaustion and documentation in the offender's file of appropriate violation responses according to the incentives and interventions grid adopted under 46-23-1028, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b), or~~ 45-5-625(4)*, or [section 19]*.

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is not a compliance violation, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions, which may include placement in:

(A) a secure facility designated by the department for up to 9 months; or

(B) a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

(c) If the judge finds that the offender has not violated a term or condition of a suspended or deferred sentence, the judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) (a) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.

(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted and documented in the offender's file, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions; or

(ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include placement as provided in subsection (7)(a)(ii).

(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7).

(9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(10) All sanction and placement decisions must be documented in the offender's file.

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

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(iv) absconding; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

(12) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

**Section 27.** Section 46-18-205, MCA, is amended to read:

"**46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-507, incest; or

(d) 45-8-218, deviate sexual conduct.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent; and

(h) ~~45-5-603, aggravated promotion of prostitution~~ *45-5-706, aggravated sex trafficking*.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b), or~~ 45-5-625(4)*, or [section 19]*."

**Section 28.** Section 46-18-207, MCA, is amended to read:

"**46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b),~~ *[section 19],* or 45-5-625(4) and is released on parole, remain in an outpatient sexual offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b) or (2)(c),~~*[section 19],* or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

**Section 29.** Section 46-18-219, MCA, is amended to read:

"**46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-625, sexual abuse of children;

(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) 45-5-508, aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-215, strangulation of a partner or family member;

(iv) 45-5-302, kidnapping;

(v) 45-5-401, robbery; or

(vi) ~~45-5-603(2)(b), aggravated promotion of prostitution of a child~~ *[section 19], child sex trafficking*.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

**Section 30.** Section 46-18-222, MCA, is amended to read:

"**46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b),~~ *[section 19],* and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) *except for offenses committed under 45-5-706 and [section 19],* in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-508, *or* 45-5-601(3) ~~45-5-602(3), 45-5-603(2)(b)~~ and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

**Section 31.** Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;
(ii) 45-5-202, aggravated assault;
(iii) 45-5-213, assault with a weapon;
(iv) 45-5-302(2), kidnapping;
(v) 45-5-303(2), aggravated kidnapping;
(vi) 45-5-401(2), robbery;
(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
(viii) 45-5-503(2) through (5), sexual intercourse without consent;
(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;
(x) 45-5-508, aggravated sexual intercourse without consent;
(xi) 45-5-601(3)~~ or (4)~~, ~~45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c),~~ prostitution~~, promotion of prostitution, or aggravated promotion of prostitution~~ when the person patronized or engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense ~~or when the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion~~;
(xii) 45-5-625(4), sexual abuse of children;
(xiii) 45-5-702, 45-5-703, ~~45-5-704, or~~ 45-5-705, *45-5-706, or [section 19], sex* trafficking ~~of persons, involuntary servitude, sexual servitude, or~~*, labor trafficking,* patronizing a victim of ~~sexual servitude~~ *sex trafficking, aggravated sex trafficking, or child sex trafficking*;
(xiv) 45-9-101(3), criminal possession with intent to distribute a dangerous drug; and
(xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.
(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).
(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.
(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

**Section 32.** Section 46-18-608, MCA, is amended to read:

"**46-18-608. Motion to vacate conviction -- human trafficking victims.** (1) On the motion of a person, a court may vacate a person's conviction of prostitution, ~~promoting prostitution,~~ *sex trafficking or prior similar laws in effect at the time the act occurred,* or another nonviolent offense if the court finds that the person's participation in the offense was a direct result of having been a victim of human trafficking or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.
(2) The motion must:
(a) be made within a reasonable time after the person ceased to be involved in human trafficking or sought services for human trafficking victims, subject

to reasonable concerns for the safety of the person, family members of the person, or other victims of human trafficking who could be jeopardized by filing a motion under this section; and

(b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.

(3) No official determination or documentation is required to grant a motion by a person under this section, but official documentation from a local government or a state or federal agency of the person's status as a victim of human trafficking creates a rebuttable presumption that the person's participation in the offense was a direct result of having been a victim of human trafficking.

(4) If a court vacates a conviction under this section, the court shall:

(a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and

(b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown.

(5) For the purposes of this section, the term "human trafficking" has the meaning provided in 45-5-701."

**Section 33.** Section 46-23-502, MCA, is amended to read:

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

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

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

(3) "Municipality" means an entity that has incorporated as a city or town.

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

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

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), ~~45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c),~~ 45-5-625, ~~45-5-704, or~~ 45-5-705*, 45-5-706, or [section 19]*; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

**Section 34.** Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603 (2)(b), or~~ 45-5-625(4), *or [section 19],* in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or an immediate family member of the victim. If the victim or an immediate family member

of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer using effective communication strategies and other evidence-based practices to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b), or~~ 45-5-625(4), *or [section 19],* the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, the probation and parole officer shall notify the probationer of eligibility for conditional discharge from supervision when a probationer is in compliance with the conditions of supervision when:

(a) under the women's risks and needs assessment:

(i) a low-risk probationer has served 9 months;

(ii) a moderate-risk probationer has served 12 months;

(iii) a medium-risk probationer has served 18 months; and

(iv) a high-risk probationer has served 24 months; and

(b) under the Montana offender reentry and risk assessment:

(i) a low-risk probationer has served 9 months;

(ii) a moderate-risk probationer has served 12 months;

(iii) a high-risk probationer has served 18 months; and

(iv) a very high-risk probationer has served 24 months.

(7) The probationer, the probationer's attorney, or the prosecutor may file a motion recommending conditional discharge. The motion must set forth the following:

(a) why the probationer meets the requirements of subsection (6); and

(b) whether the department of corrections supports or opposes the motion.

(8) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an

accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.

(9) The department of corrections shall make reasonable efforts to notify the victim if required by 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following:

(a) a copy of the motion;

(b) written notice that:

(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;

(ii) if a hearing is set, the date, time, and place of the hearing; and

(iii) the victim may appear and testify at any hearing held on the motion.

(10) (a) The court may hold a hearing on the motion. A judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (10)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision."

**Section 35.** Section 61-8-818, MCA, is amended to read:

"**61-8-818. Permanent revocation of commercial driver's license -- felony involving use of commercial motor vehicle for trafficking of persons.** If the department receives a conviction report that a person used a commercial motor vehicle in the commission of an offense under ~~45-5-702~~ *Title 45, chapter 5, part 7,* or a similar law in another state or in the commission of a felony of trafficking of persons, the department shall revoke the person's commercial driver's license for life and may not reinstate the commercial driver's license for any reason."

**Section 36. Repealer.** The following sections of the Montana Code Annotated are repealed:

45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
45-5-704. Sexual servitude.

**Section 37. Codification instruction.** [Sections 19 and 20] are intended to be codified as an integral part of Title 45, chapter 5, part 7, and the provisions of Title 45, chapter 5, part 7, apply to [sections 19 and 20].

**Section 38. 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 39. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 168

[HB 181]

AN ACT REVISING EDUCATION LAWS RELATED TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE REQUIREMENT THAT THE SUPERINTENDENT HAVE A BACHELOR'S DEGREE; ENSURING THAT THE SUPERINTENDENT OR THE DEPUTY SUPERINTENDENT HAS AT LEST 5 YEARS OF TEACHING OR SCHOOL ADMINISTRATIVE EXPERIENCE; REVISING THE LIST OF DISCRETIONARY STAFF THAT THE SUPERINTENDENT MAY EMPLOY; AND AMENDING SECTIONS 20-3-101 AND 20-3-103, MCA.

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

**Section 1.** Section 20-3-101, MCA, is amended to read:

"**20-3-101. Election and qualifications.** (1) A superintendent of public instruction for the state of Montana must be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) A person is qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of election;

(b) has resided within the state for the 2 years preceding the election;

~~(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and~~

~~(d)~~*(c) holds at least a bachelor's degree from an accredited college or university; and*

*(d)* otherwise possesses the qualifications for office that are required by The Constitution of the State of Montana."

**Section 2.** Section 20-3-103, MCA, is amended to read:

"**20-3-103. Deputy superintendent -- staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in that office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering ~~upon~~ *on* the performance of the deputy's duties. *If the superintendent of public instruction has fewer than 5 years of teaching or school administrative experience, the superintendent shall appoint a deputy with at least 5 years of teaching or school administrative experience.*

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist in the administration of the duties and services of the office. In organizing the staff, the superintendent of public instruction may employ:

*(a) a professional staff with expertise in curriculum, instruction, and assessment;*

*(b) specialists in curriculum and instruction in the content areas contained in the accreditation standards adopted by the board of public education under 20-7-101;*

~~(a)~~*(c)* a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

~~(b)~~*(d)* a professional staff consisting of individuals prepared in *career and technical education program areas, including but not limited to* agriculture education, business and marketing education, family and consumer sciences education, *health science education,* and industrial technology education; and

~~(c)~~*(e)* a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education."

Approved April 19, 2023

# CHAPTER NO. 169

[HB 187]

AN ACT CLARIFYING THAT CHILD CARE IS A RESIDENTIAL USE OF PROPERTY AND A RESIDENTIAL PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE.

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

**Section 1. Home-based child care.** For residential property subject to a covenant, providing child care in a family day-care home as defined in 52-2-703 or a group day-care home as defined in 52-2-703 is a residential use of property and is a residential purpose.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section 1].

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to covenants on residential property in existence before [the effective date of this act] that do not clearly and expressly address child care.

**Section 6. Applicability.** [This act] applies to covenants on residential property adopted on or after [the effective date of this act] that do not clearly and expressly address child care.

Approved April 19, 2023

# CHAPTER NO. 170

[HB 200]

AN ACT REVISING THE MONTANA SAFE HAVEN NEWBORN PROTECTION ACT TO CLARIFY THAT A NEWBORN MAY BE SURRENDERED VIA A NEWBORN SAFETY DEVICE OR BY PLACING AN EMERGENCY CALL; PROVIDING THAT PARENTS BE INFORMED OF THE RIGHT TO REMAIN ANONYMOUS; REVISING DEFINITIONS; AMENDING SECTIONS 40-6-402 AND 40-6-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 40-6-402, MCA, is amended to read:

"**40-6-402. Definitions.** As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

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

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency *or is on duty responding to an emergency call*; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a governmental fire agency organized under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

*(11) "Newborn safety device" means a medical device that meets the following requirements:*

*(a) provides a controlled environment for the care and protection of a newborn;*

*(b) includes an adequate dual alarm system connected to the newborn safety device:*

*(i) that is tested at least one time a month to ensure the alarm system is in working order; and*

*(ii) that dispatches the nearest emergency services provider to retrieve a newborn placed in the device;*

*(c) is physically located on an exterior structural wall of the premises of a fire department, hospital, or law enforcement agency that is staffed 24 hours a day, except that all emergency services providers located at the premises may be dispatched to an emergency; and*

*(d) is located in an area that is conspicuous and visible to an emergency services provider.*

~~(11)~~*(12) (a)* "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn.

*(b) The term includes but is not limited to:*

*(i) leaving a newborn in a newborn safety device; or*

*(ii) placing an emergency call and remaining with a newborn until an emergency services provider arrives to accept the newborn.*"

**Section 2.** Section 40-6-405, MCA, is amended to read:

"**40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody.** (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) ~~The~~ *If a newborn is surrendered face to face, the* emergency services provider shall make a reasonable effort to do all of the following:

(a) *if possible, inform the parent that the parent may remain anonymous;*

*(b)* if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

~~(b)~~*(c)* if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

~~(c)~~*(d)* if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

~~(d)~~*(e)* provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) ~~After~~ *If a newborn is surrendered face to face, after* providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.

*(4) If a newborn is surrendered in a newborn safety device, the emergency services provider shall make a reasonable effort to provide the parent with the written material described in subsection (2)(e).*"

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

Approved April 19, 2023

# CHAPTER NO. 171

[HB 211]

AN ACT GENERALLY REVISING THE LOCAL SUBDIVISION REVIEW PROCEDURE; REVISING THE INFORMATION A GOVERNING BODY MAY CONSIDER WHEN DETERMINING IF SUBSEQUENT HEARINGS ARE REQUIRED FOR A SUBDIVISION APPLICATION; REVISING THE REQUIREMENTS FOR A PHASED SUBDIVISION; PROVIDING TIMELINES AND AMENDED CONDITIONS OF A FINAL PLAT APPROVAL; REVISING THE EXPEDITED SUBDIVISION REVIEW PROCESS; AMENDING SECTIONS 76-3-615, 76-3-617, AND 76-3-623, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 76-3-615, MCA, is amended to read:

"**76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether ~~public comments or documents~~ *public comments or other information* presented to the governing body at a hearing held pursuant to 76-3-605 ~~constitute:~~

~~(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or~~

~~(b)~~ *constitutes relevant,* new information regarding a subdivision application *or a substantial change to the design of the subdivision* that has never been submitted as evidence or considered by either the governing body or its agent or agency ~~at a hearing during which the subdivision application was considered~~ *and has a substantial effect on the governing body's consideration of the application*.

(3) If the governing body determines that the ~~public comments or documents constitute~~ *information presented to the governing body constitutes* the information described in subsection (2)~~(b)~~, the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible *or the change to the design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts*; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information ~~that may have an impact on the findings and conclusions~~, *including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information* that the governing body will rely ~~upon~~ *on* in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any

information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision."

**Section 2.** Section 76-3-617, MCA, is amended to read:

"**76-3-617. Phased development -- application requirements -- hearing required.** (1) A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to parts 5 and 6 of this chapter for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

(2) Except as otherwise provided by this section, the phased development application must be reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development must be reviewed as provided in subsection (4).

(3) The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

(4) ~~Prior to the commencement of each phase~~ *For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary approval of the subdivision*, the subdivider shall provide written notice to the governing body *not more than 1 year or less than 90 calendar days in advance of submitting the final plat application*. The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider *to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The governing body may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances*. ~~After the hearing, the governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases.~~ Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing ~~and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information~~. Any additional conditions must be met before final plat approval for each ~~particular~~ *remaining* phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in subsection (3).

(5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the phases in the phased development."

**Section 3.** Section 76-3-623, MCA, is amended to read:

"**76-3-623. Expedited review for certain subdivisions.** (1) Except as provided in subsection (9), a subdivision application, regardless of the number

of lots, that meets the requirements provided in subsection (3) is entitled to the expedited review process provided in this section at the applicant's request.

(2) A subdivision application that meets the requirements provided in subsection (3) is exempt from:

(a) the preparation of an environmental assessment as required in 76-3-603; and

(b) the review criteria listed in 76-3-608(3)(a).

(3) A subdivision qualifies for the expedited review process provided in this section if the proposed subdivision:

(a) is within:

(i) an incorporated city or town or consolidated city-county government and is subject to an adopted growth policy pursuant to Title 76, chapter 1, and adopted zoning regulations pursuant to Title 76, chapter 2, part 3; or

(ii) ~~a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services~~ *a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services or an area outside the boundaries of an incorporated city, town, county, or consolidated city-county that is served by city, town, county, or consolidated city-county water and sewer services* and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning regulations pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through minimum lot sizes or densities, bulk and dimensional requirements, and use standards;

(b) complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 ~~without the need for variances or other deviations to adopted standards~~; and

(c) includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

(4) On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 ~~without the need for variances or other deviations to adopted standards~~ and includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations. *The application may include a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504 and in accordance with the provisions of 76-3-506.*

(5) The governing body shall:

(a) hold a hearing ~~on~~ *and approve, conditionally approve, or deny* the subdivision application within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in subsection (3). *If the subdivision application includes a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504, the time for holding a hearing as required in this subsection (5) must be extended to a total of 45 working days.*;

(b) provide notice for the hearing required in subsection (5)(a) by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing;

(c) approve the application unless public comment or other information demonstrates the application does not comply with:

(i) adopted zoning regulations, design standards, and other requirements of subdivision regulations adopted pursuant to 76-3-504 ~~without the need for~~

~~variances or other deviations to adopted standards~~*, including any criteria for granting variances or deviations from subdivision regulations adopted pursuant to 76-3-504*; or

(ii) adopted ordinances or regulations for the onsite development of or extension to public infrastructure; and

(d) provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision for expedited review as allowed in this section that provides:

(i) the facts and conclusions that the governing body relied on in making its decision to approve or deny the application; and

(ii) the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

(6) The governing body may:

(a) with the agreement of the applicant, grant one extension of the review period allowed in subsection (5)(a) not to exceed 180 calendar days;

(b) adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4; or

(c) delegate to its reviewing agent or agency the requirement to hold a public hearing on the subdivision application as required in this section.

(7) A local governing body may not adopt zoning regulations pursuant to 76-2-203 or 76-2-304, subdivision regulations pursuant to 76-3-504, or other ordinances or regulations that restrict the use of the expedited subdivision review process as provided in this section.

(8) (a) Except as modified in this section, subdivision applications meeting the requirements for an expedited review remain subject to the provisions of 76-3-608(3)(b) through (3)(d) and 76-3-608(6) through (10), 76-3-610 through 76-3-614, 76-3-621, and 76-3-625.

(b) The provisions of this section supersede any provision of this chapter that is in conflict with any provision of this section.

(9) A subdivision located outside of the boundaries of an incorporated city or town may not utilize the expedited review process provided in this section unless the board of county commissioners of the county where the subdivision is located has voted to allow the provisions of this section to apply to subdivisions located outside the boundaries of an incorporated city or town.

*(10) An incorporated city, town, or consolidated city-county shall implement the expedited review provided for in this section for a proposed subdivision that meets the criteria in subsection (3)(a)(i) regardless of whether the city, town, or consolidated city-county has incorporated the provisions of this section into the city, town, or consolidated city-county's local subdivision regulations.*"

**Section 4. Applicability.** [Section 2] applies to subdivision applications that are approved on or after October 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 172

[HB 213]

AN ACT PROVIDING FOR A CERTIFICATE OF NONVIABLE BIRTH; ESTABLISHING REQUIREMENTS FOR REQUESTING AND ISSUING A CERTIFICATE; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION; AND AMENDING SECTION 50-15-101, MCA.

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

**Section 1. Certificate of nonviable birth -- requirements.** (1) The department shall establish a certificate of nonviable birth on a form adopted by the department and meeting the requirements of subsection (4). On request by a parent, a certificate of nonviable birth must be filed and be provided to the parent.

(2) The department shall make available on its website information to advise a parent:

(a) of the manner in which a request for a certificate of nonviable birth may be made; and

(b) that the parent must request the certificate within 60 days of the nonviable birth.

(3) A request for a certificate of nonviable birth must:

(a) be made within 60 days of the birth on a form prescribed by the department by rule; and

(b) include the date of the nonviable birth and the county in which the birth occurred.

(4) The certificate of nonviable birth prepared by the department must contain:

(a) the date of the nonviable birth;

(b) the county in which the birth occurred;

(c) the name of the fetus. If the requesting parent does not wish to provide a name, the department shall fill in the certificate with the name "baby boy", "baby girl", or, if the sex of the child is unknown, "baby" and the last name of the parent as provided in 50-15-221.

(5) The following statement must appear on the front of the certificate: "This certificate is not proof of a live birth".

(6) A certificate of nonviable birth is a private commemorative document and is not a public record.

(7) It is a final agency action, not subject to review under the Montana Administrative Procedure Act, for the department to refuse to issue a certificate of nonviable birth to a person who has failed to provide information required by the department by rule for issuance of the certificate.

(8) The department may not use a certificate of nonviable birth to calculate live birth statistics.

(9) This section may not be used to establish, bring, or support:

(a) a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth; or

(b) a criminal cause of action against any person or entity for a nonviable birth.

(10) The department shall adopt rules as to the form, content, and process for the certificate of nonviable birth.

**Section 2.** Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

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

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(10) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

*(11) "Nonviable birth" means an unintentional, spontaneous fetal demise occurring after a heartbeat is detected but prior to the 20th week of gestation of a pregnancy that has been verified by a health care provider.*

~~(11)~~*(12)* "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

~~(12)~~*(13)* "Physician" means a person legally authorized to practice medicine in this state.

~~(13)~~*(14)* "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

~~(14)~~*(15)* "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

~~(15)~~*(16)* (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

~~(16)~~*(17)* "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(17)~~*(18)* "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(18)~~*(19)* "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [section 1].

Approved April 19, 2023

# CHAPTER NO. 173

[HB 224]

AN ACT REVISING REGISTRATION LAWS FOR MILITARY SERVICE MEMBERS; ALLOWING THE MOTOR VEHICLE DIVISION TO EXTEND CERTAIN INCENTIVES TO ALL MILITARY SERVICE MEMBERS WHO ARE MONTANA RESIDENTS; AMENDING SECTION 61-3-456, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-3-456, MCA, is amended to read:

"**61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.** (1) As an incentive for military service, an owner of a motor vehicle, trailer, semitrailer, or pole trailer who is a Montana resident ~~who entered active military duty from Montana~~, including a national guard or reserve member, and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle, trailer, semitrailer, or pole trailer. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, trailer, semitrailer, or pole trailer; and

(c) that the motor vehicle, trailer, semitrailer, or pole trailer is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle, trailer, semitrailer, or pole trailer registered under subsection (1) is as provided in 61-3-321.

(3) A motor vehicle, trailer, semitrailer, or pole trailer registered under this section is not subject to:

(a) the taxes or fees described in 61-3-303(6);

(b) the fee in lieu of tax under 61-3-529 or the registration fee under 61-3-321(2) or 61-3-562; or

(c) any of the fees provided in part 5 of this chapter."

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

Approved April 19, 2023

# CHAPTER NO. 174

[HB 227]

AN ACT REVISING LAWS RELATED TO CONTRIBUTIONS BY PARENTS OR GUARDIANS FOR THE COST OF A YOUTH'S CARE WHILE THE YOUTH IS IN THE CUSTODY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT A COURT MAY ONLY ORDER CONTRIBUTION FROM A PARENT OR GUARDIAN FOR

THE COST OF THE OUT-OF-HOME CARE OF A YOUTH IF THE COURT FINDS THAT CONTRIBUTION IS IN THE YOUTH'S BEST INTERESTS AND WILL NOT IMPEDE THE PARENT'S OR GUARDIAN'S ABILITY TO ENGAGE IN REUNIFICATION EFFORTS; CREATING A PRESUMPTION THAT ORDERING CONTRIBUTION FROM A PARENT OR GUARDIAN FOR A YOUTH'S OUT-OF-HOME CARE BEFORE THE YOUTH HAS BEEN OUT OF THE HOME FOR 18 MONTHS IS CONTRARY TO THE YOUTH'S BEST INTERESTS; AND AMENDING SECTIONS 41-3-101 AND 41-3-446, MCA.

WHEREAS, it is the policy of the State of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children pursuant to section 41-7-102, MCA; and

WHEREAS, it is the policy of the State of Montana to preserve the unity and welfare of the family whenever possible pursuant to section 41-3-101, MCA; and

WHEREAS, the federal Children's Bureau released new guidance to states on June 8, 2022, that under 42 U.S.C. 671(a)(17), an assignment of rights to child support for children in foster care receiving maintenance payments under Title IV-E of the Social Security Act "is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child's permanency plan."

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

**Section 1.** Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

*(c) support the efforts of parents whose children have been removed to reunify the family, including by taking into account whether those efforts may be impeded by court-ordered support payments;*

~~(c)~~*(d)* ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

~~(d)~~*(e)* recognize that a child is entitled to assert the child's constitutional rights;

~~(e)~~*(f)* ensure that all children have a right to a healthy and safe childhood in a permanent placement; and

~~(f)~~*(g)* ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent

or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) (a) The department shall create a registry for voluntary registration by close relatives of a child for purposes of notifying those relatives when a child that is related has been removed from the child's home pursuant to this chapter.

(b) The registry must contain the names of the child and the child's parents and may contain the names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact information for the child and parents and any of the relatives whose names appear in the registry.

(5) The department shall consult the registry and notify the relatives on the registry on the first working day after placing the child in accordance with 41-3-301.

(6) The department may charge a fee commensurate with the cost of operating the registry. The fee may be charged only to those persons whose names are voluntarily entered in the registry.

(7) In implementing the policy of this section, the child's health and safety are of paramount concern."

**Section 2.** Section 41-3-446, MCA, is amended to read:

"**41-3-446. Contributions by parents or guardians for youth's care.** (1) *(a)* ~~If~~ *In accordance with subsections (1)(b) and (1)(c), if* physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's ~~parents~~ *parent* or ~~guardians~~ *guardian* to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

*(b) The court may order contribution only upon a finding that:*

*(i) the payment is in the best interests of the child; and*

*(ii) the payment will not impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.*

*(c) In making a determination under this section, the court shall presume that it is not in the best interests of a child to order a contribution from the child's parent or guardian unless the child has been in the physical or legal custody of the state for 18 consecutive months or more.*

(2) If the court determines that the youth's ~~parents~~ *parent* or ~~guardians are financially~~ *guardian is* able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. *The court may not order a retroactive contribution from the parent or guardian for costs incurred before the order is issued. An order under this subsection must be in writing.*

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

*(d) When assessing whether the implementation of immediate income withholding is in the best interest of the child under subsection (3)(c)(i), the court shall consider whether immediate income withholding would impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.*

~~(d)~~*(e)* An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) ~~if~~ *be* approved by the court~~, be~~ *and* entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

*(6) Unless a youth receives benefits under Title 53, chapter 4, part 2, the department may not seek a contribution from a parent or guardian of a youth whose physical or legal custody has been transferred to the department under this chapter except under the provisions of this section or pursuant to a preexisting support order under 40-5-290.*"

Approved April 19, 2023

# CHAPTER NO. 175

[HB 228]

AN ACT REVISING PUBLIC INVESTMENTS BY PROHIBITING THE CONSIDERATION OF NONPECUNIARY FACTORS; PROVIDING DEFINITIONS; PROVIDING ENFORCEMENT BY THE ATTORNEY GENERAL; 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 3]:

(1) (a) "Material" means a risk or return regarding which there is a substantial likelihood that a reasonable investor would attach importance when:

(i) evaluating the potential financial return and financial risks of an existing or prospective investment; or

(ii) exercising, or declining to exercise, any rights appurtenant to securities.

(b) When used to qualify a risk or return, the term does not include furthering nonpecuniary, environmental, social, governance, or other similarly oriented considerations, or any portion of a risk or return that primarily relates to events that involve a high degree of uncertainty regarding what may or may not occur in the distant future and are systemic, general, or not investment-specific in nature.

(2) "Nonpecuniary" includes any action taken or factor considered by a fiduciary with any purpose to further environmental, social, governance, or other similarly oriented considerations.

(3) (a) "Pecuniary factor" means a factor that has a material effect on the financial risk or financial return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and funding policy.

(b) The term does not include nonpecuniary factors.

**Section 2. Consideration of nonpecuniary factors prohibited.** (1) The evaluation by the board of investments or the evaluation or exercise of any right appurtenant to an investment must take into account only pecuniary factors.

(2) Environmental, social, governance, or other similarly oriented considerations are pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. The weight given to those factors must solely reflect a prudent assessment of their impact on risk and return.

(3) The board, when considering environmental, social, governance, or other similarly oriented factors as pecuniary factors, is also required to examine the level of diversification, the degree of liquidity, and the potential risk-return in comparison with other available investment alternatives that would play a similar role in their plans' portfolios.

(4) Any pecuniary consideration of environmental, social, governance, or other similarly oriented factors must necessarily include evaluating whether greater returns can be achieved through investments that rank poorly on these factors.

**Section 3. Voting ownership interests.** (1) All shares held directly or indirectly by or on behalf of the board must be voted solely in the pecuniary interest of the beneficiaries of the funds.

(2) Voting to further nonpecuniary, environmental, social, governance, or other similarly oriented considerations is prohibited.

(3) The board may not follow the recommendations of a proxy advisory firm or other service providers unless the firm or service provider commits to follow proxy voting guidelines that are consistent with the board's obligation to act based solely on pecuniary factors unless no economically practicable alternative is available.

**Section 4. Enforcement by attorney general.** The attorney general may bring an action in the appropriate Montana district court to prevent or restrain violations of [sections 1 through 3].

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [sections 1 through 4].

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

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2023

# CHAPTER NO. 176

[HB 236]

AN ACT GENERALLY REVISING PUBLIC SAFETY AGENCY AND PUBLIC SAFETY ANSWERING POINT LAWS; AND PROVIDING FOR NOTIFICATION OF SERVICE REQUESTS.

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

**Section 1. Public safety agencies and public safety answering points -- notification of service requests.** A public safety answering point must immediately notify a public safety agency with jurisdictional responsibilities of a request for service in the agency's jurisdiction, even when the answering point does not dispatch emergency services, and transfer or relay emergency communications to that public safety agency.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 4, part 1, and the provisions of Title 10, chapter 4, part 1, apply to [section 1].

Approved April 19, 2023

# CHAPTER NO. 177

[HB 239]

AN ACT REVISING LAWS RELATED TO WHO MAY SERVE AS A JUDGE PRO TEMPORE IN JUSTICES' COURTS; AMENDING SECTION 3-10-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 3-10-116, MCA, is amended to read:

"**3-10-116. Disqualification of justice of peace for justice's court of record -- judge pro tempore.** (1) When a justice of the peace for a justice's court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court of record, another justice of the peace for a justice's court not of record, a municipal court judge, *a judge for a city court of record, a judge for a city court not of record,* a retired justice of the peace for a justice's court of record, a retired municipal court judge, *a retired judge for a city court of record,* ~~an~~ *a licensed Montana* attorney *on active, inactive, or senior status*, or the clerk of the justice's court of record to act as a judge pro tempore.

(2) (a) Except as provided in subsection (2)(b), the judge pro tempore has the same power and authority as the justice of the peace for the justice's court of record.

(b) A clerk of a justice's court of record acting as a judge pro tempore may not preside over a trial but may preside over an initial appearance."

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

Approved April 19, 2023

# CHAPTER NO. 178

[HB 246]

AN ACT PROVIDING THAT COUNTIES AND CITIES MAY CREATE ZONING DISTRICTS THAT ALLOW FOR TINY DWELLING UNITS; DEFINING TINY DWELLING UNIT; REVISING A DEFINITION; AND AMENDING SECTIONS 76-2-202 AND 76-2-302, MCA.

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

**Section 1.** Section 76-2-202, MCA, is amended to read:

"**76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land*, including the creation of zoning districts that allow tiny dwelling units*.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(3) The regulations in one district may differ from those in other districts.

(4) As used in this section*, the following definitions apply:*~~,~~

*(a)* "~~manufactured~~ *"Manufactured* housing" means a dwelling for a single household, built offsite in a factory ~~on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and~~*, that* is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

*(b) (i) "Tiny dwelling unit" means a residential dwelling unit that is 350 to 750 square feet, is on a permanent foundation, and is used as a single-family dwelling for at least 45 days or longer.*

*(ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1, 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.*

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

**Section 2.** Section 76-2-302, MCA, is amended to read:

"**76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land*, including the creation of zoning districts that allow tiny dwelling units*.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

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

*(a)* ~~"manufactured~~ *"Manufactured* housing" means a single-family dwelling, built offsite in a factory ~~on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and~~*, that* is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

*(b) (i) "Tiny dwelling unit" means a residential dwelling unit that is 350 to 750 square feet, is on a permanent foundation, and is used as a single-family dwelling for at least 45 days or longer.*

*(ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1, 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.*

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

(6) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices."

Approved April 19, 2023

# CHAPTER NO. 179

[HB 263]

AN ACT REQUIRING INSURANCE COVERAGE FOR REFILL OF PRESCRIPTION EYEDROPS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-18-704, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Coverage for refill of eyedrops.** (1) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage of prescription eyedrops may not deny coverage for a refill of a prescription eyedrop if:

(a) the eyedrop is a covered benefit under the policy, contract, or agreement;

(b) the prescriber indicates on the original prescription that additional quantities are needed;

(c) the refill requested by the insured does not exceed the number of additional quantities needed; and

(d) (i) an amount of time has passed in which the insured should have used 70% of the dosage unit of the drug according to the prescriber's instructions; or

(ii) (A) 21 days have passed since a 30-day supply of the eyedrop was dispensed;

(B) 42 days have passed since a 60-day supply of the eyedrop was dispensed; or

(C) 63 days have passed since a 90-day supply of the eyedrop was dispensed.

(2) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions and to utilization review as provided in Title 33, chapter 32.

(b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical care covered under the plan may not be imposed on the coverage under this section.

**Section 2.** Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131;

(b) therapies for Down syndrome, as provided in 33-22-139;

(c) treatment for children with hearing loss as provided in 33-22-128(1) and (2);

(d) the care and treatment of mental illness in accordance with the provisions of Title 33, chapter 22, part 7; ~~and~~

(e) telehealth services, as provided for in 33-22-138*; and*

*(f) refills of prescription eyedrops as provided in [section 1].*

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the advisory committee on immunization practices of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any

education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as is available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153.

(15) An insurance contract or plan issued under this part and a group benefits plan issued by the Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter 22, part 7. (See compiler's comments for contingent termination of certain text.)"

**Section 3.** Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Other chapters and provisions of this title apply to health maintenance organizations as follows: Title 33, chapter 1, parts 6, 12, and 13; 33-2-1114; 33-2-1211 and 33-2-1212; Title 33, chapter 2, parts 13, 19, 23, and 24; 33-3-401; 33-3-422; 33-3-431; Title 33, chapter 3, part 6; Title 33, chapter 10; Title 33, chapter 12; 33-15-308; Title 33, chapter 17; Title 33, chapter 19; 33-22-107; 33-22-128; 33-22-129; 33-22-131; 33-22-136 through 33-22-139; 33-22-141 and 33-22-142; 33-22-152 and 33-22-153; *[section 1];* 33-22-156 through 33-22-159; 33-22-180; 33-22-244; 33-22-246 and 33-22-247; 33-22-514 and 33-22-515; 33-22-521; 33-22-523 and 33-22-524; 33-22-526; and Title 33, chapter 32."

**Section 4.** Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, parts 23 and 24;

(e) 33-3-308;
(f) Title 33, chapter 7;
(g) Title 33, chapter 18, except 33-18-242;
(h) Title 33, chapter 19;
(i) 33-22-107, 33-22-128, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, ~~and~~ 33-22-153*, and [section 1]*;
(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;
(k) Title 33, chapter 22, part 7; and
(l) 33-22-707.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

**Section 6. Effective date.** [This act] is effective January 1, 2024.

Approved April 19, 2023

# CHAPTER NO. 180

[HB 264]

AN ACT ESTABLISHING A DECENNIAL VETERANS' LONG-TERM CARE NEEDS STUDY; DEFINING THE SCOPE OF THE STUDY; ASSIGNING STAFFING RESPONSIBILITY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Decennial veterans' long-term care needs study.** (1) On receipt of the most recent federal census, the department of public health and human services, in consultation with the Montana veterans' affairs division, shall perform an analysis of the long-term care needs of veterans in the state, known as the decennial veterans' long-term care needs study.

(2) The study must determine the demographics of the Montana veteran population, including the number and age of veterans in each county and the type of long-term care needs of the population. The long-term care assessment for veterans must include evaluation of the need for nursing home, domiciliary, and Alzheimer's disease support services, as well as the various types of community and in-home care that are needed.

(3) The study must include a personal survey of the Montana veteran population, including online and paper options. This study must be conducted in collaboration with veterans' outreach organizations and other local groups that work directly with the Montana veteran population.

(4) The study must evaluate existing veterans' home services and the configuration of those services with respect to the needs identified.

(5) The study must include an analysis of the need for additional state veterans' cemeteries, including their placement within the state.

**Section 2. Department of public health and human services to conduct study.** The staff of the senior and long-term care division within the department of public health and human services shall conduct the study. The staff of the Montana veterans' affairs division shall provide support as needed.

**Section 3. Survey report required.** As soon as possible after the completion of the decennial survey, the department of public health and human services and the Montana veterans' affairs division shall present a detailed report to the state administrative and veterans' affairs interim committee in accordance with 5-11-210.

**Section 4. Appropriation.** There is appropriated $40,000 from the general fund to the department of public health and human services for the biennium beginning July 1, 2023, for the purpose of conducting the veterans' long-term care needs study. Any funds not used for the survey at the end of the biennium revert to the general fund.

**Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 10, chapter 2, part 9, and the provisions of Title 10, chapter 2, part 9, apply to [sections 1 through 3].

**Section 6. Effective date.** [This act] is effective July 1, 2023.

Approved April 19, 2023

# CHAPTER NO. 181

[HB 286]

AN ACT MAKING SUICIDE PREVENTION PROGRAMS AN ALLOWABLE USE OF FUNDS FROM THE HEALING AND ENDING ADDICTION THROUGH RECOVERY AND TREATMENT ACCOUNT; AMENDING SECTIONS 16-12-122 AND 53-21-1111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-12-122, MCA, is amended to read:

"**16-12-122. Healing and ending addiction through recovery and treatment account.** (1) There is a healing and ending addiction through recovery and treatment account in the state special revenue fund. The account consists of money transferred to the account pursuant to 16-12-111.

(2) Revenue in the account must be used to provide statewide programs for:

(a) substance use disorder prevention;

*(b) youth suicide prevention;*

~~(b)~~*(c)* mental health promotion; and

~~(c)~~*(d)* crisis, treatment, and recovery services for substance use and mental health disorders.

(3) The programs must be designed to:

(a) increase the number of individuals choosing treatment over incarceration;

(b) improve access to, utilization of, and engagement and retention in prevention, treatment, and recovery support services;

(c) expand the availability of community-based services that reflect best practices or are evidence-based;

(d) leverage additional federal funds when available for the healthy Montana kids plan provided for in Title 53, chapter 4, part 11, and the medicaid program provided for in Title 53, chapter 6, for the purposes of this section;

(e) provide funding for programs and services that are described in subsections (2)(a) through (2)(c) and provided on an Indian reservation located in this state; or

(f) provide funding for grants and services to tribes for use in accordance with this section.

(4) (a) An amount not to exceed $500,000, including eligible federal matching sources when applicable, must be used to provide funding for grants

and services to tribes for tobacco prevention and cessation, substance use disorder prevention, mental health promotion, and substance use disorder and mental health crisis, treatment, and recovery services.

(b) The department of public health and human services shall manage the programs funded by the special revenue account and shall adopt rules to implement the programs.

(5) The legislature shall appropriate money from the state special revenue account provided for in this section for the programs referred to in this section.

(6) Programs funded under this section must be funded through contracted services with service providers."

**Section 2.** Section 53-21-1111, MCA, is amended to read:

"**53-21-1111. Suicide prevention grants.** (1) The department shall administer a grant program from funds appropriated by the legislature for suicide prevention activities pursuant to this section.

(2) (a) To be eligible for a grant under this section, an entity shall demonstrate credible evidence to the department that the activity to be funded is effective in preventing suicide.

(b) An activity must be considered effective if it meets one or more of the following criteria:

(i) it has been cited as effective by peer-reviewed research or literature;

(ii) it was a formally adopted recommendation of the Montana suicide review team established in section 3, Chapter 353, Laws of 2013; or

(iii) it increases knowledge of and response to adverse childhood experiences.

*(3) The requirements of this section apply to youth suicide prevention programs funded with money from the healing and ending addiction through recovery and treatment account provided for in 16-12-122.*"

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

Approved April 19, 2023

# CHAPTER NO. 182

[HB 291]

AN ACT REVISING LOCAL GOVERNMENT INVESTMENT OPTIONS; ALLOWING MUNICIPAL GROUP SELF-INSURANCE PROGRAMS TO INVEST USING INSURER INVESTMENT STRATEGIES ALLOWED IN TITLE 33, CHAPTER 12, PARTS 1 THROUGH 3; AND AMENDING SECTIONS 7-6-202, 7-7-2316, 7-7-4316, AND 20-9-412, MCA.

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

**Section 1.** Section 7-6-202, MCA, is amended to read:

"**7-6-202. Investment of public money ~~in direct obligations of United States~~.** (1) *A municipal group self-insurance program that may include consolidated governments established pursuant to an interlocal agreement may follow the investment standards provided in Title 33, chapter 12, parts 1 through 3, to invest public money that is not required for immediate use by the municipal group self-insurance program.*

*(2)* A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection ~~(2)~~ *(3)*:

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

~~(2)~~*(3)* An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

~~(3)~~*(4)* The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

~~(4)~~*(5)* Except as provided in ~~subsections (5) and~~ *subsection* (6), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

~~(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.~~

(6) An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:

(a) the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and

(b) the school district trustees provide written consent.

(7) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2."

**Section 2.** Section 7-7-2316, MCA, is amended to read:

"**7-7-2316. Advance refunding bonds.** (1) The board of county commissioners may issue refunding bonds pursuant to this section to refund

outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

(2) Except as provided in subsection (3), the funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202~~(3)~~*(4)*.

(4) The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the sinking fund account for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation."

**Section 3.** Section 7-7-4316, MCA, is amended to read:

"**7-7-4316. Advance refunding bonds.** (1) A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(2) Except as provided in subsection (3), the funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202~~(3)~~*(4)*.

(4) The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the sinking fund account for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation."

**Section 4.** Section 20-9-412, MCA, is amended to read:

"**20-9-412. Issuance of refunding bonds without election.** (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program that is authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) 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 district.

(6) (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, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(b) Except as provided in subsection (6)(c), funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest

and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202~~(3)~~*(4)*.

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the debt service fund for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Approved April 19, 2023

## CHAPTER NO. 183

[HB 292]

AN ACT MAKING THE ENTERPRISE FUND FOR THE BOARD OF ACCOUNTANCY PERMANENT; ELIMINATING THE TERMINATION DATE OF A STATUTORY APPROPRIATION; REPEALING SECTION 37-50-210, MCA; REPEALING SECTION 10, CHAPTER 427, LAWS OF 2015, AND SECTION 5, CHAPTER 50, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Repealer.** The following section of the Montana Code Annotated is repealed:

37-50-210. Deposit of money collected.

**Section 2. Repealer.** Section 10, Chapter 427, Laws of 2015, and section 5, Chapter 50, Laws of 2019, are repealed.

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

Approved April 19, 2023

## CHAPTER NO. 184

[HB 295]

AN ACT EXEMPTING MEMBERS OF A BOARD, BUREAU, OR COMMISSION IN CERTAIN COUNTIES FROM THE RESTRICTION ON THE APPOINTMENT OF RELATIVES TO POSITIONS ON THE BOARD, BUREAU, OR COMMISSION; REQUIRING THE BOARD, BUREAU, OR COMMISSION MEMBER RELATED TO THE PERSON BEING APPOINTED TO ABSTAIN FROM VOTING ON THE 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 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 as defined by the trustees in 20-1-302;

(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;

(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~~.~~*;*

*or*

*(h) a board, bureau, or commission of a county with a population of less than 10,000 people, if all the board, bureau, or commission members, with the exception of any member 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 board member.*

(3) Prior to the appointment of a person referred to in subsection (2)(b) ~~or (2)(g)~~, *(2)(g), or (2)(h),* written notice of the time and place for the intended action must be published at least 15 days prior to the 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 19, 2023

# CHAPTER NO. 185

[HB 299]

AN ACT REVISING LOCAL GOVERNMENT RESOLUTION AND ORDINANCE REQUIREMENT APPLICABILITY RELATED TO LAND USE REGULATION ENFORCEMENT; REVISING A DEFINITION; AMENDING SECTIONS 7-5-103 AND 7-5-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7-5-103, MCA, is amended to read:

"**7-5-103. Ordinance requirements.** (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance passed may not:

(a) contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances;

(b) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(c) deny a customer of a private business the ability to access goods or services provided by the private business; or

(d) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(b) and (2)(c):

(i) allow for the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided in subsection (2)(c) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

(4) The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to*:*

*(a)* the adoption of an ordinance allowed in 75-7-411*;*

*(b) the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210; or*

*(c) the enforcement of an ordinance pursuant to 76-2-308(2).*

(5) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.

(6) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit *and that has an established physical location within the boundaries of the county or municipality*. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

**Section 2.** Section 7-5-121, MCA, is amended to read:

"**7-5-121. Resolution requirements.** (1) All resolutions must be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(a) and (2)(b):

(i) allow for the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to criminal charges.

(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

*(4) The prohibitions provided for in subsection (2) do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.*

~~(4)~~*(5)* Resolutions may be submitted and adopted at a single meeting of the governing body.

~~(5)~~*(6)* After passage and approval, all resolutions must be entered into the minutes and signed by the chairperson of the governing body.

~~(6)~~*(7)* As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit *and that has an established physical location within the boundaries of the county or municipality*. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

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

Approved April 19, 2023

# CHAPTER NO. 186

[HB 310]

AN ACT REQUIRING A REPORT ON THE USES OF THE HEALING AND ENDING ADDICTION THROUGH RECOVERY AND TREATMENT SPECIAL REVENUE ACCOUNT; AMENDING SECTION 16-12-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-12-122, MCA, is amended to read:

"**16-12-122. Healing and ending addiction through recovery and treatment account -- *report*.** (1) There is a healing and ending addiction through recovery and treatment account in the state special revenue fund. The account consists of money transferred to the account pursuant to 16-12-111.

(2) Revenue in the account must be used to provide statewide programs for:

(a) substance use disorder prevention;

(b) mental health promotion; and

(c) crisis, treatment, and recovery services for substance use and mental health disorders.

(3) The programs must be designed to:

(a) increase the number of individuals choosing treatment over incarceration;

(b) improve access to, utilization of, and engagement and retention in prevention, treatment, and recovery support services;

(c) expand the availability of community-based services that reflect best practices or are evidence-based;

(d) leverage additional federal funds when available for the healthy Montana kids plan provided for in Title 53, chapter 4, part 11, and the medicaid program provided for in Title 53, chapter 6, for the purposes of this section;

(e) provide funding for programs and services that are described in subsections (2)(a) through (2)(c) and provided on an Indian reservation located in this state; or

(f) provide funding for grants and services to tribes for use in accordance with this section.

(4) (a) An amount not to exceed $500,000, including eligible federal matching sources when applicable, must be used to provide funding for grants and services to tribes for tobacco prevention and cessation, substance use disorder prevention, mental health promotion, and substance use disorder and mental health crisis, treatment, and recovery services.

(b) The department of public health and human services shall*:*

*(i)* manage the programs funded by the special revenue account ~~and shall~~*;*

*(ii)* adopt rules to implement the programs*; and*

*(iii) provide a written report to the children, families, health, and human services interim committee, in accordance with 5-11-210, no later than September*

*1 of each year on the programs, grants, and services funded under this section. The report must include the amount of funding each program received.*

(5) The legislature shall appropriate money from the state special revenue account provided for in this section for the programs referred to in this section.

(6) Programs funded under this section must be funded through contracted services with service providers."

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

Approved April 20, 2023

# CHAPTER NO. 187

[HB 311]

AN ACT PROVIDING FOR A CHEMICAL DEPENDENCY TREATMENT VOUCHER PROGRAM; ESTABLISHING PROVIDER AND PARTICIPANT REQUIREMENTS; ESTABLISHING SERVICES ELIGIBLE FOR VOUCHER COVERAGE; ESTABLISHING PAYMENT PROVISIONS; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-12-122 AND 53-24-204, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Chemical dependency treatment room and board voucher program -- eligibility -- provider and participant requirements.** (1) Subject to available funding, the department shall establish a room and board voucher program to support chemical dependency treatment for individuals who would otherwise be unable to access the treatment in a timely manner because of financial barriers.

(2) An approved private or public treatment program that has applied for and been selected to participate in the voucher program may submit vouchers for reimbursement of chemical dependency treatment room and board not otherwise covered by insurance or another assistance program. The individual receiving voucher-eligible services must:

(a) live in Montana;

(b) be 14 years of age or older; and

(c) have an annual family income at or below 200% of the federal poverty level.

(3) The voucher program may be used to cover the costs of room and board.

(4) An approved treatment program may apply to participate in the voucher program. If approved, the program remains eligible to participate for the full budget biennium during which approval was received unless the department terminates the program's participation for cause.

(5) A participating treatment program:

(a) may submit vouchers for payment of room and board provided to a qualifying individual as soon as costs are incurred if other payment sources are not immediately available;

(b) shall report any change in an individual's income or insurance status that makes the individual ineligible for further voucher payments;

(c) shall collect and report outcome measures as required by the department by rule; and

(d) shall keep records as required by the department to substantiate the cost of program-provided room and board.

**Section 2.** Section 16-12-122, MCA, is amended to read:

"**16-12-122. Healing and ending addiction through recovery and treatment account.** (1) There is a healing and ending addiction through recovery and treatment account in the state special revenue fund. The account consists of money transferred to the account pursuant to 16-12-111.

(2) Revenue in the account must be used to provide statewide programs for:

(a) substance use disorder prevention;

(b) mental health promotion; and

(c) crisis, treatment, and recovery services for substance use and mental health disorders.

(3) The programs must be designed to:

(a) increase the number of individuals choosing treatment over incarceration;

(b) improve access to, utilization of, and engagement and retention in prevention, treatment, and recovery support services;

(c) expand the availability of community-based services that reflect best practices or are evidence-based;

(d) leverage additional federal funds when available for the healthy Montana kids plan provided for in Title 53, chapter 4, part 11, and the medicaid program provided for in Title 53, chapter 6, for the purposes of this section;

(e) provide funding for programs and services that are described in subsections (2)(a) through (2)(c) and provided on an Indian reservation located in this state; or

(f) provide funding for grants and services to tribes for use in accordance with this section.

(4) (a) An amount not to exceed $500,000, including eligible federal matching sources when applicable, must be used to provide funding for grants and services to tribes for tobacco prevention and cessation, substance use disorder prevention, mental health promotion, and substance use disorder and mental health crisis, treatment, and recovery services.

(b) The department of public health and human services shall manage the programs funded by the special revenue account and shall adopt rules to implement the programs.

(5) The legislature shall appropriate money from the state special revenue account provided for in this section for*:*

*(a) the chemical dependency treatment room and board voucher program provided for in [section 1]; and*

*(b)* the programs referred to in this section.

(6) Programs funded under this section must be funded through contracted services with service providers."

**Section 3.** Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts; and

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-108 and 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;

*(f) establish the voucher program provided for in [section 1], including adopting rules to carry out the provisions of [section 1];*

~~(f)~~*(g)* establish criteria to be used for the development of new programs;

~~(g)~~*(h)* provide planning for the optimal use of funds by increasing efficiency of services, ensuring existing needs are met, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

~~(h)~~*(i)* cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;

~~(i)~~*(j)* establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses;

~~(j)~~*(k)* hold all state-approved facilities, programs, and providers to uniform standards as established by the department by rule; and

~~(k)~~*(l)* assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

**Section 4. Appropriation.** (1) There is appropriated $600,000 from the healing and ending addiction through recovery and treatment special revenue account provided for in 16-12-122 to the department of public health and human services for the biennium beginning July 1, 2023, for payments made through the voucher program provided for in [section 1].

(2) The legislature intends that the appropriation be considered as part of the ongoing base for the next legislative session.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 24, part 2, and the provisions of Title 53, chapter 24, part 2, apply to [section 1].

**Section 6. Effective date.** [This act] is effective July 1, 2023.

**Section 7. Termination.** [This act] terminates June 30, 2027.

Approved April 20, 2023

# CHAPTER NO. 188

[HB 326]

AN ACT REVISING LAWS RELATED TO THE APPOINTMENT OF THE JUDICIAL STANDARDS COMMISSION; REVISING THE AUTHORITIES RESPONSIBLE FOR APPOINTING COMMISSION MEMBERS; ESTABLISHING A NOMINATION PANEL OF REPRESENTATIVES APPOINTED BY THE SPEAKER OF THE HOUSE; REQUIRING THE SPEAKER OF THE HOUSE TO APPOINT TWO DISTRICT COURT JUDGES TO THE COMMISSION; REQUIRING THE ATTORNEY GENERAL TO APPOINT AN ATTORNEY TO THE COMMISSION; PROVIDING A TRANSITION; AMENDING SECTION 3-1-1101, MCA; REPEALING SECTION 3-1-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Legislative nomination panel.** (1) There is a nomination panel made up of members of the house of representatives for the purposes of providing recommendations to the speaker of the house about appointments made as provided in 3-1-1101(1)(a). Within 3 days of the start of each regular legislative session, the speaker of the house shall appoint three representatives

to the legislative nomination panel. The panel must have at least one member from the minority party. If a vacancy occurs on the panel, the speaker may appoint a replacement.

(2) When a vacancy occurs on the judicial standards commission in a position appointed as provided in 3-1-1101(1)(a), the speaker of the house shall notify the district court judges, who shall present the nomination panel with a list of all district court judges who are willing to serve as a commissioner. After consideration of the judges' qualifications, the nomination panel shall forward no fewer than three names to the speaker of the house, who shall select a commissioner from that pool of names.

(3) Members of the nomination panel serve until the start of the first regular session after their appointment unless they are reappointed.

(4) The nomination panel may meet between regular sessions of the legislature to fill vacancies.

**Section 2.** Section 3-1-1101, MCA, is amended to read:

"**3-1-1101. Creation and composition of commission.** *(1)* There is created a judicial standards commission consisting of five members as follows:

~~(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court. The election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an appointment. After the chief justice certifies the election, each judge must be confirmed by the senate.~~

*(a) two district court judges appointed by the speaker of the house as provided in [section 1] and confirmed by the senate;*

~~(2)~~*(b)* one attorney who has practiced law in this state for at least 10 years, appointed by the ~~supreme court~~ *attorney general* and confirmed by the senate; and

~~(3)~~*(c)* two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor and confirmed by the senate.

*(2) Members shall serve staggered 4-year terms.*"

**Section 3. Transition.** (1) After [the effective date of this act] and when a vacancy occurs:

(a) in a seat held by a district court judge, the position must be filled using the provisions of [section 1];

(b) in a seat held by an attorney appointed by the supreme court, the position must be filled as provided in 3-1-1101(1)(b); and

(c) in a seat held by a citizen appointed by the governor, the position must be filled as provided in 3-1-1101(1)(c).

(2) Members appointed under the provisions of this section serve a full term unless appointed to fill an unexpired term. A member appointed pursuant to this section may be reappointed.

(3) After initial appointments are made as provided in subsections (1)(a) and (1)(b), all future vacancies must be filled as provided in 3-1-1103.

**Section 4. Repealer.** The following section of the Montana Code Annotated is repealed:

3-1-1102. Staggered terms of members.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 11, and the provisions of Title 3, chapter 1, part 11, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 20, 2023

# CHAPTER NO. 189

[HB 336]

AN ACT PROVIDING STATE RECOGNITION FOR FAMILY CHILD-CARE PROVIDERS THAT ARE LICENSED BY A BRANCH OF THE UNITED STATES ARMED FORCES, INCLUDING THE UNITED STATES COAST GUARD; AND AMENDING SECTION 52-2-721, MCA.

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

**Section 1.** Section 52-2-721, MCA, is amended to read:

"**52-2-721. License required -- registration required -- term of license or registration certificate -- no fee charged.** (1) A person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, in which day care is provided on a regular basis, unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure.

*(7) The department shall recognize the status of and may not require a state license for a facility that is licensed as a family child care provider or child care facility by a branch of the United States armed forces, including the United States coast guard.*"

Approved April 20, 2023

# CHAPTER NO. 190

[HB 342]

AN ACT REVISING EMERGENCY SERVICES LAW; PROVIDING THAT AN INCIDENT COMMANDER SHALL PROVIDE COPIES OF REPORTS TO RESPONDING FIRE AGENCIES OR DISASTER OR EMERGENCY AGENCIES THAT REQUEST COPIES; AND AMENDING SECTION 10-3-202, MCA.

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

**Section 1.** Section 10-3-202, MCA, is amended to read:

"**10-3-202. Mutual aid -- cooperation.** (1) Political subdivisions and governmental fire agencies organized under Title 7, chapter 33, must be encouraged and assisted by the division to conclude mutual aid arrangements

with other public and private agencies within this state or any other state or the United States pursuant to Title 10, chapter 3, part 11, for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American red cross under its congressional charter.

*(5) An incident commander shall provide copies of reports generated in response to the incident to any responding governmental fire agency or disaster or emergency agency that requests copies*."

Approved April 20, 2023

# CHAPTER NO. 191

[HB 347]

AN ACT ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ISSUE LETTERS OF WARNING FOR VIOLATIONS AND ADMINISTRATIVE DEFICIENCIES FOR HARD-ROCK MINING AND OPENCUT MINING OPERATIONS; DEFINING ADMINISTRATIVE DEFICIENCY; AND AMENDING SECTIONS 82-4-361 AND 82-4-441, MCA.

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

**Section 1.** 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, *an administrative deficiency notice,* or a term or condition of a permit issued under this part, it shall send a *letter of warning or* violation ~~letter~~ to the person. The *letter of warning or* 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 *letter of warning or* 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.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative 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 issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order 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.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(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.

(6) (a) In addition to the *letter of warning or* 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.

(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.

*(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur.*"

**Section 2.** Section 82-4-441, MCA, is amended to read:

"**82-4-441. 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, *an administrative deficiency notice,* or a term or condition of a permit issued under this part, it shall send a *letter of warning or* violation ~~letter~~ to the person. The *letter of warning or* 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 *letter of warning or* 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.

(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 permit:

(a) an administrative penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional administrative penalty of not less than $100 or more than $1,000 for each day during which a violation continues.

(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 82-4-1001.

(5) (a) In addition to the *letter of warning or* 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.

(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 county in which the opencut operation is located.

(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.

*(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur.*"

Approved April 20, 2023

# CHAPTER NO. 192

[HB 353]

AN ACT REVISING LAWS RELATED TO BARBERS AND COSMETOLOGISTS; DEFINING NATURAL HAIR BRAIDING SERVICES; EXEMPTING NATURAL HAIR BRAIDING SERVICES FROM LICENSING REGULATIONS; AND AMENDING SECTIONS 37-31-101 AND 37-31-102, MCA.

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

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

(1) "Affiliated" is an individual who owns more than 20% of or is employed 32 hours or more weekly at a school licensed under this chapter.

(2) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(3) "Barbering" means any of the following practices performed for payment, either directly or indirectly, on the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(4) "Barber nonchemical" means a person licensed under this chapter to engage in the practice of barbering nonchemical.

(5) "Barbering nonchemical" means the practice or teaching of barbering as provided in subsection (3) but excludes the use of chemicals to wave, straighten, color, bleach, or highlight hair.

(6) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

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

(8) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology.

(9) (a) "Cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

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

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

(11) "Electrologist" means a person licensed under this chapter to engage in the practice of electrology.

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

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

(13) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

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

(15) "Instructor" or "teacher" means a person licensed under 37-31-303.

(16) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(17) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

*(18) (a) "Natural hair braiding" means the service of twisting, wrapping, weaving, extending, locking, or braiding hair by hand or with mechanical devices, including:*

*(i) the use of natural or synthetic hair extensions, natural or synthetic hair fibers, decorative beads, or other hair accessories;*

*(ii) the minor trimming of natural hair or hair extensions incidental to the twisting, wrapping, weaving, extending, locking, or braiding of hair; and*

*(iii) the making of wigs from natural hair, natural fibers, synthetic fibers, and hair extensions.*

*(b) The term includes the use of topical agents, such as conditioners, gels, moisturizers, oils, pomades, and shampoos.*

*(c) (i) The term does not include the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair or the use of chemical hair joining agents, such as synthetic tape, keratin bonds, or fusion bonds.*

*(ii) The term does not mean the practice of cosmetology.*

~~(18)~~*(19)* "Place of residence" means a home and the following residences defined under 50-5-101:

(a) an assisted living facility;

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

(c) a hospice;

(d) a critical access hospital;

(e) a long-term care facility; or

(f) a residential treatment facility.

~~(19)~~*(20)* (a) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring.

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

~~(20)~~*(21)* "School" means a location approved by the board for training persons for licensure as provided for in 37-31-311.

~~(21)~~*(22)* "Student teacher" means an individual enrolled in a teacher training course as provided for under 37-31-301(1)(d).

~~(22)~~*(23)* "Teacher" means a person licensed under 37-31-305.

~~(23)~~*(24)* "Teacher training" means a 650-hour course prescribed by the board by rule under this chapter."

**Section 2.** Section 37-31-102, MCA, is amended to read:

"**37-31-102. Exemptions.** The provisions of this chapter do not prohibit:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; ~~or~~

(3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services*; or*

*(4) services by an individual who engages only in natural hair braiding*."

Approved April 20, 2023

# CHAPTER NO. 193

[HB 356]

AN ACT REVISING LAWS RELATED TO FIREARMS; PROVIDING THAT A GOVERNMENTAL ENTITY MAY NOT CONTRACT WITH A COMPANY THAT HAS A POLICY THAT DISCRIMINATES AGAINST FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS; REQUIRING WRITTEN VERIFICATION IN A CONTRACT WITH A GOVERNMENTAL ENTITY THAT A COMPANY DOES NOT DISCRIMINATE AGAINST FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS; AND PROVIDING DEFINITIONS.

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

**Section 1. Financial industry nondiscrimination -- definitions.** (1) The provisions of this section apply only to a contract that:

(a) Is between a governmental entity and a company with at least 10 full-time employees; and

(b) has a value of at least $100,000 that is paid wholly or partly from public funds of the governmental entity.

(2) Except as provided in subsection (3), a governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it:

(a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and

(b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(3) The provisions of subsection (2) do not apply to a governmental entity that:

(a) contracts with a sole-source provider; or

(b) does not receive a bid from a company that is able to provide the written verification required by subsection (2).

(4) The department of administration, the judicial branch, or a state agency, as defined in 2-2-102 and in which the contract originated, has the authority and responsibility of reviewing state governmental contracts to confirm that the requirements of subsection (2) of this section have been satisfied.

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

(a) "Ammunition" means a loaded cartridge or shot shell, case, primer, projectile, wadding, or propellant powder.

(b) (i) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, a majority-owned subsidiary, a parent company, or an affiliate of those entities or associations that exists to make a profit.

(ii) The term does not include a sole proprietorship.

(c) (i) "Contract" means a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and the right to seek a remedy for the breach of those duties.

(ii) This term does not include an agreement related to investment services.

(d) (i) "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

(A) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(B) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations; or

(C) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(ii) The term does not include the policies of a vendor, merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

(iii) The term also does not include a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local laws, policies, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on the status of an entity or association as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(e) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.

(f) "Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.

(g) "Firearm entity" means:

(i) a firearm or a firearm accessory or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or

(ii) a gun range.

(h) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(i) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(ii) has two or more firearm entities as members; and

(iii) is exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as an organization described by section 501(c) of that code.

(i) "Governmental entity" means any branch, department, agency, or instrumentality of state government, any official or other person acting under color of state law, or any political subdivision of this state.

(j) "Sole-source provider" means a supplier who provides goods or services of a unique nature or goods or services that are solely available through the supplier and the supplier is the only practicable source to provide the goods or services.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 20, and the provisions of Title 30, chapter 20, apply to [section 1].

Approved April 20, 2023

## CHAPTER NO. 194

[HB 388]

AN ACT INCREASING PENALTIES FOR IMPORTING LIVESTOCK WITHOUT HEALTH INSPECTION; AND AMENDING SECTION 81-2-708, MCA.

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

**Section 1.** Section 81-2-708, MCA, is amended to read:

"**81-2-708. Penalty.** *(1)* ~~A~~ *Except as provided in subsection (2), a* person convicted of violating this part shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

*(2) A person convicted of violating this part by importing livestock into the state without a required health certificate, permit, or other documentation authorized by department rule shall be fined not less than $500 per animal or $5,000, whichever is greater.*"

Approved April 20, 2023

## CHAPTER NO. 195

[HB 399]

AN ACT REVISING COUNTY ATTORNEY AND ATTORNEY GENERAL REPORTING REQUIREMENTS RELATED TO CHILDHOOD SEXUAL ABUSE; REVISING REPORTING REQUIREMENTS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 41-3-102, 41-3-202, AND 41-3-210, MCA.

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

**Section 1. Department report to attorney general.** By July 15 of each year, the department shall report to the attorney general and the law and justice interim committee in accordance with 5-11-210 the number of referrals to county attorneys pursuant to 41-3-202(1)(b)(i) that the department made for each county in the previous fiscal year.

**Section 2.** 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, or 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;

(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; or

(C) any form of child sex trafficking or human trafficking.

(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).

(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) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "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.

*(10) "Decline to prosecute" means a decision not to file criminal charges based on the matter reported by the department or investigation by law enforcement for any reason, including but not limited to insufficient evidence.*

~~(10)~~*(11)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(11)~~*(12)* "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(12)~~*(13)* "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.

~~(13)~~*(14)* "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.

~~(14)~~*(15)* "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.

~~(15)~~*(16)* "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.

~~(16)~~*(17)* "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 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.

~~(17)~~*(18)* "Parent" means a biological or adoptive parent or stepparent.

~~(18)~~*(19)* "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.

~~(19)~~*(20)* "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.

~~(20)~~*(21)* "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.

~~(21)~~*(22)* "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.

~~(22)~~*(23)* (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.

~~(23)~~*(24)* (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, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

~~(24)~~*(25)* (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.

~~(25)~~*(26)* "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.

~~(26)~~*(27)* "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

~~(27)~~*(28)* "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.

~~(28)~~*(29)* "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.

~~(29)~~*(30)* "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

~~(30)~~*(31)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, 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.

~~(31)~~*(32)* "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

~~(32)~~*(33)* "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

~~(33)~~*(34)* "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.

~~(34)~~*(35)* (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 (34), "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.

~~(35)~~*(36)* "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 3.** Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) (a) 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.

(b) (i) Except as provided in ~~subsection~~ *subsections* (1)(b)(ii) *and (1)(b)(iii),* upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned

upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

*(iii) If the department or law enforcement determines that the allegation involves the county attorney or an employee in the county attorney's office in the county in which the acts that are subject to reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the attorney general.*

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the living arrangement presents an unsafe environment for the child. The safety and risk assessment 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 safety and risk assessment. In conducting a safety and risk assessment under this section, a child protection specialist 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, if the initial investigation does not within 48 hours result in the development of independent, corroborative, and attributable information indicating that there exists a current risk of physical or psychological harm to the child, a child may not be removed from the living arrangement. If independent, corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the department shall then conduct a safety and risk assessment.

(3) The child protection specialist is responsible for conducting the safety and risk assessment. If the child is treated at a medical facility, the child protection specialist, 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 an interview of the child is considered necessary, the child protection specialist, 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 safety and risk assessment the department has reasonable cause to suspect that the child is suffering abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or enter into a written prevention plan, 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 the determinations of the safety and risk assessment; and

(ii) notify the child's family of the determinations of the safety and risk assessment, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk assessment determinations and associated records, except for medical records, within 30 days after the end of the 3-year period starting from the date of completion of the safety and risk assessment.

(c) Safety and risk assessment determinations and associated records may be maintained for a reasonable time as defined by department rule under the following circumstances:

(i) the safety and risk assessment determines that abuse or neglect occurred;

(ii) there had been a previous or there is a subsequent report and investigation resulting in a safety and risk assessment concerning the same person; or

(iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in need of care based on the circumstances surrounding the initial allegations.

(6) The investigating child protection specialist, within 60 days of commencing an investigation, shall also furnish a written safety and risk assessment to the department and, upon request, to the family. Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and safety and risk assessment determinations. Unless records are required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(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.

(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon."

**Section 4.** Section 41-3-210, MCA, is amended to read:

"**41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney general and legislature --** ***attorney general report.*** (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

(i) the department;

(ii) state and local law enforcement; and

(iii) all members of a county or regional interdisciplinary child information and school safety team established under 52-2-211.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

(c) Upon receipt of a report from the department, as required in 41-3-202, that includes an allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing to the person who initially reported the information that the county attorney received the report. The certification must include the date the report was received and the age and gender of the alleged victim. If the report was anonymous, the county attorney shall provide the certification to the department. If the report was made to the county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

(2) The county attorney shall retain records relating to the report or investigation, including the certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(3) ~~By June 1 of each year~~ *On or before January 1 and June 1 of each year*, each county attorney shall report to the attorney general. The report to the attorney general must include, for each report from the department or investigation by law enforcement:

(a) a unique case identifier;

(b) the date that the initial report or allegation was received by the county attorney;

(c) the date ~~of any decision to prosecute based on a report or investigation~~ *any charges were filed*;

(d) the date of any decision to decline to prosecute ~~based on a report or investigation~~; ~~and~~

(e) if charges are filed against a defendant, ~~any known outcomes of the case~~ *whether a conviction was obtained and, if a conviction was obtained, the sentence imposed by the court; and*

*(f) the number of certifications made as required by subsection (1)(c), including the number of certifications made to the department.*

*(4) (a) The attorney general shall create a form for county attorneys to use when submitting reports required by subsection (3). The form must allow collection of the information required by subsection (3) on an aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to prosecute.*

*(b) The information provided by a county attorney on the forms is confidential criminal justice information as defined in 44-5-103.*

~~(4)~~*(5)* The attorney general shall report to the law and justice interim committee each year by ~~September 1~~ *August 15* and as provided in 5-11-210. The reports must provide*:*

*(a)* aggregated information regarding the status of the cases reported *in subsection (3)* by the county attorneys, *except for those cases pending review of the county attorney or uncharged cases still under investigation,* including data on the total number of cases reported~~.~~*;*

*(b)* the number of cases declined for prosecution~~, and~~*;*

*(c)* the number of cases charged*;*

*(d) any action in the past fiscal year that the attorney general took under the authority of 2-15-501 based on the reports submitted as required in subsection (3). A report made pursuant to this subsection (5)(d) may not include the name of the county.*

*(e) after consideration of the information provided by the department pursuant to [section 1], any county attorney who failed to provide a complete report required by subsection (3).*"

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].

Approved April 20, 2023

# CHAPTER NO. 196

[HB 401]

AN ACT REVISING THE LOAD SECURING LAW FOR VEHICLES HAULING TRASH ON PUBLIC HIGHWAYS; PROVIDING THAT A VIOLATION IS A MISDEMEANOR; AND AMENDING SECTION 61-8-370, MCA.

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

**Section 1.** Section 61-8-370, MCA, is amended to read:

"**61-8-370. Securing of load -- requirement -- exemptions -- *violation*.** (1) *(a)* A person operating a loaded vehicle on a public highway shall load the vehicle or secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

*(b) A person operating a loaded vehicle on a public highway from which any object escapes that may create an obstruction dangerous to the public traveling on the highway, including but not limited to building materials, furniture, and appliances, shall:*

*(i) remove the object or cause it to be removed from the roadway when removal can be completed safely; and*

*(ii) if state or local resources are used to complete the removal, pay the cost of the removal as determined by the applicable roadway authority.*

(2) The following vehicles are exempt from the provisions in subsection (1):

(a) a commercial motor vehicle that is operating in compliance with state and federal laws and requirements governing the securing of loads;

(b) a vehicle transporting processed or unprocessed agricultural products or inputs, including but not limited to fertilizer, manure, and pesticides;

(c) a vehicle performing road maintenance; and

(d) a vehicle in a marked work zone."

*(3) A person who violates the requirements of subsection (1) is guilty of a misdemeanor.*

Approved April 20, 2023

# CHAPTER NO. 197

[HB 417]

AN ACT PROHIBITING THE PERFORMANCE OF SENSITIVE MEDICAL EXAMINATIONS WITHOUT OBTAINING INFORMED CONSENT; PROVIDING EXCEPTIONS; AND PROVIDING PENALTIES.

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

**Section 1. Performance of sensitive medical examinations -- informed consent required.** (1) A person licensed or certified under this title to provide health care may not knowingly perform or supervise the performance of a breast, pelvic, urogenital, prostate, or rectal examination on a patient who is anesthetized or unconscious unless:

(a) the patient or a person authorized to make health care decisions for the patient has provided specific informed consent to the examination;

(b) the examination is within the scope of care for a procedure or diagnostic examination scheduled to be performed on the patient; or

(c) an emergency exists, it is impracticable to obtain consent, and the examination is necessary for diagnostic or treatment purposes.

(2) Violation of subsection (1) constitutes unprofessional conduct.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

Approved April 20, 2023

# CHAPTER NO. 198

[HB 418]

AN ACT REVISING LIMITATIONS ON IRRIGABLE ACREAGE WITHIN AN IRRIGATION DISTRICT; PROVIDING A DEFINITION; AND AMENDING SECTION 85-7-1837, MCA.

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

**Section 1.** Section 85-7-1837, MCA, is amended to read:

"**85-7-1837. Limitation on irrigable acreage -- special election or petition.** (1) The board of commissioners of an irrigation district shall, when authorized as provided in subsection (2), limit the amount of acreage within any farm operation in the district that may be serviced by the district.

(2) In determining whether to impose an acreage limitation on a particular farm operation:

(a) the board of commissioners may submit the question to the qualified electors of the district by election as provided in 85-7-1712; or

(b) the limitation may be imposed based on a petition signed by not less than 60% of landowners representing not less than 60% of the irrigated land within the boundaries of the irrigation district.

(3) If a limitation is imposed by special election or petition, the minimum acreage limit that may be imposed is 960 acres of land owned or leased by ~~any individual or legal entity~~ *a qualified recipient*.

(4) An irrigation district that has imposed an acreage limitation may require certification of acreage and designation of excess acreage by the electors. Except as provided in subsection (5), the district may withhold water on all acres designated as excess acres.

(5) ~~An individual~~ *A qualified recipient* ~~or legal entity~~ that owns or leases irrigated acreage in excess of the limitation at the time the process of imposing a limitation begins may continue operations without penalty and without having water withheld as long as the ownership or lease remains with ~~that individual or legal entity~~ *the qualified recipient*.

(6) The board of commissioners may adopt regulations necessary to administer the provisions of this section.

*(7) For the purposes of this section, "qualified recipient" means an individual, married couple, corporation, trust, or partnership that operates as an individual, independent farm operation.*"

Approved April 20, 2023

# CHAPTER NO. 199

[HB 425]

AN ACT GENERALLY REVISING LAWS RELATED TO RESTITUTION PAYMENTS UNDER THE YOUTH COURT ACT; REVISING THE DEFINITION OF VICTIM; EXTENDING THE JURISDICTION OF THE YOUTH COURT RELATED TO RESTITUTION PAYMENTS TO A YOUTH'S 25TH BIRTHDAY; PROVIDING THAT RESTITUTION PAID UNDER THE YOUTH COURT ACT IS NOT SUBJECT TO SUBROGATION; REQUIRING THE COURT TO RELIEVE AN INDIVIDUAL OF RESTITUTION PAYMENTS AT THE END OF THE COURT'S JURISDICTION IN CERTAIN CIRCUMSTANCES; PROVIDING THAT OUTSTANDING RESTITUTION AT THE EXPIRATION OF THE JURISDICTION OF THE COURT IS VOID; ALLOWING A YOUTH TO PETITION THE COURT FOR MODIFICATION OF A RESTITUTION ORDER; AND AMENDING SECTIONS 41-5-103, 41-5-205, 41-5-1521, AND 46-18-248, 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) "Conditional release" means the release of a youth from a correctional facility subject to the terms and conditions of the conditional release agreement provided for in 52-5-126.

(6) (a) "Correctional facility" means a public secure residential facility or a private secure residential facility under contract with the department and operated to provide for the custody, treatment, training, and rehabilitation of:

(i) formally adjudicated delinquent youth;

(ii) convicted adult offenders or criminally convicted youth; or

(iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under conditions set by the department in rule.

(b) The term does not include a state prison as defined in 53-30-101.

(7) "Cost containment pool" means an account from which funds are allocated by the office of court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home placements, programs, and services or to the department for costs incurred under 41-5-1504.

(8) "Cost containment review panel" means the panel established in 41-5-131.

(9) "Court", when used without further qualification, means the youth court of the district court.

(10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense;

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation; or

(c) who has violated the terms and conditions of the youth's conditional release agreement.

(13) "Department" means the department of corrections provided for in 2-15-2301.

(14) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).

(b) ~~Department records do~~ *The term does* not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(15) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of the terms and conditions of the youth's conditional release agreement.

(16) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(17) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(18) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(19) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(20) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(21) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(22) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts of a day, whichever is less, in 1 school year.

(24) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(25) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(26) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(27) "Judge", when used without further qualification, means the judge of the youth court.

(28) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(29) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(30) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(33) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(34) "Probable cause hearing" means the hearing provided for in 41-5-332.

(35) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(36) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(37) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(38) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(39) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(42) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a *natural* person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have violated the terms and conditions of the youth's conditional release agreement and includes the youth court judge, juvenile probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

**Section 2.** Section 41-5-205, MCA, is amended to read:

"**41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) ~~and (3)~~ *through (4)*, the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;

(b) the youth is discharged by the department; or

(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.

*(4) The jurisdiction of the court over restitution payments extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.*

~~(4)~~*(5)* The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522."

**Section 3.** Section 41-5-1521, MCA, is amended to read:

"**41-5-1521. Restitution.** (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) the age of the youth;

(b) the ability of the youth to pay;

(c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need for intervention to pay;

(d) the amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered.

(2) Restitution paid by a youth*, a youth's parent or guardian, or a person who contributed to the delinquency of a youth* is *not* subject to subrogation ~~as provided in 46-18-248~~.

*(3) (a) If, after a hearing held in accordance with 41-5-1432, the court finds that the youth made a good faith effort yet was unable to pay restitution in full, the court shall relieve the individual of the requirement, and the balance will be void and uncollectable.*

*(b) If the court finds that a good faith effort was not made to pay restitution as ordered, the youth shall remain under the court's jurisdiction as provided in 41-5-208 until the age of 25. At the expiration of the court's jurisdiction, the balance of outstanding restitution is void and uncollectable.*

*(c) A youth under obligation to pay restitution may petition the court at any time for modification of the restitution order.*"

**Section 4.** Section 46-18-248, MCA, is amended to read:

"**46-18-248. Rights of state for crime victims compensation and assistance -- *exception*.** (1) ~~Whenever~~ *Except as provided in subsection (3), whenever* a victim is paid from the state crime victims compensation and assistance program as provided in Title 53, chapter 9, part 1, for loss arising out of a criminal act, the state is subrogated, to the extent of the payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the state are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction that is part of the same continuous scheme of criminal activity of an offender.

*(3) Restitution paid by a youth, a youth's parent or guardian, or a person who contributed to the delinquency of a youth is not subject to subrogation, as provided in 41-5-1521.*"

Approved April 20, 2023

# CHAPTER NO. 200

[HB 426]

AN ACT REVISING LAWS RELATING TO INMATES APPROACHING PAROLE ELIGIBILITY OR DISCHARGE; AND AMENDING SECTIONS 46-23-201 AND 53-1-203, MCA.

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

**Section 1.** Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a correctional facility as defined in 41-5-103;

(d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for any other offense before a hearing panel conducts another hearing or review.

*(6) Nothing in this section prohibits the department from transferring a prisoner who is within 14 months of parole eligibility to a prerelease or treatment center for the purposes of preparing the prisoner for release into the community.*"

**Section 2.** Section 53-1-203, MCA, is amended to read:

"**53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) for the siting, establishment, and expansion of prerelease centers;

(ii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iii) for the establishment and maintenance of residential methamphetamine treatment programs; and

(iv) for the admission, custody, transfer, and release of persons in department programs *and state prisons, as defined in 53-30-101,* except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease *and treatment* centers for purposes of preparing inmates of a Montana prison who are ~~approaching~~ *within 14 months of* 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 *or treatment* centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 46-18-201 or 46-18-202 and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) encourage efforts within the department and at the local level that would develop housing options and resource materials related to housing for individuals who are released from the Montana state prison or community corrections programs;

(h) maintain data on the number of individuals who are discharged from the adult correction services listed in 53-1-202 into a homeless shelter or a homeless situation;

(i) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(j) collect and disseminate information relating to youth who are committed to the department for placement in a correctional facility as defined in 41-5-103;

(k) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(l) provide funding for youth who are committed to the department for placement in a correctional facility as defined in 41-5-103;

(m) administer correctional facilities as defined in 41-5-103; and

(n) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in correctional facilities.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program,

including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(7) The department shall ensure that risk and needs assessments drive the department's supervision and correctional practices, including integrating assessment results into supervision contact standards and case management. The department shall regularly validate its risk assessment tool."

Approved April 20, 2023

# CHAPTER NO. 201

[HB 497]

AN ACT REVISING PROPERTY TAX NOTIFICATION REQUIREMENTS; REQUIRING THE PROPERTY TAX BILL TO INCLUDE A COMPARISON WITH TAXES DUE IN THE PRIOR YEAR; AMENDING SECTION 15-16-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** 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% a 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% a 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) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located;

(v) the amount of the total tax due itemized by mill levy that is levied as city tax, county tax, state tax, school district tax, and other tax;

(vi) an indication of which mill levies are voted levies, including voted levies to impose a new mill levy, to increase a mill levy that is required to be submitted to the electors, or to exceed the mill levy limit provided for in 15-10-420; ~~and~~

*(vii) except as provided in subsection (2)(c), an itemization of the taxes due for each mill levy and a comparison to the amount due for each mill levy in the prior year; and*

~~(vii)~~*(viii)* a notice of the availability of all the property tax assistance programs available to property taxpayers, including the intangible land value assistance program provided for in 15-6-240, the property tax assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341.

(b) If a tax lien is attached to the property, the notice must also include, in a manner calculated to draw attention, a statement that a tax lien is attached to the property, that failure to respond will result in loss of property, and that the taxpayer may contact the county treasurer for complete information.

*(c) The information required in subsection (2)(a)(vii) may be posted on the county treasurer's website instead of being included on the written notice.*

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be given as provided in 7-1-2121. 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 2. Applicability.** [This act] applies to property tax notices issued for taxes on or after [the effective date of this act].

Approved April 20, 2023

# CHAPTER NO. 202

[HB 505]

AN ACT REVISING INSURANCE LAWS TO INCREASE THE INITIAL POLICY OR CERTIFICATE LIMIT FOR FUNERAL INSURANCE; INCREASING THE INITIAL POLICY OR CERTIFICATE LIMIT FROM $15,000 TO $25,000; AND AMENDING SECTION 33-20-1501, MCA.

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

**Section 1.** Section 33-20-1501, MCA, is amended to read:

"**33-20-1501. Funeral insurance.** (1) (a) "Funeral insurance" means an insurance policy or certificate that requires a one-time payment or the payment of premiums to provide for the costs of a funeral and burial for the policyholder or a named individual.

(b) Funeral insurance is a type of life insurance provided for in 33-1-208 and regulated under Title 33, chapter 20. The terms "burial insurance" and "preneed funeral insurance" have the same meaning as funeral insurance.

(c) Funeral insurance may be:

(i) included in a life insurance policy. This form of funeral insurance may not be sold by or through a person licensed under Title 37, chapter 19, regardless of whether a person licensed under Title 37, chapter 19, also has an insurance producer's license in this state.

(ii) a limited policy or certificate with a guaranteed death benefit that may be sold by:

(A) a licensed insurance producer; or

(B) a person licensed under Title 37, chapter 19, parts 3 and 4, if that person also is licensed as a life insurance producer in this state.

(d) Unless otherwise provided by Title 33, chapter 20, the initial policy or certificate limit under subsection (1)(c)(ii) is up to ~~$15,000~~ *$25,000*.

(2) Funeral insurance for the purposes of Title 33 is not a fixed amount prepaid into a trust or escrow fund, called a prearranged funeral plan, as described in 37-19-827, or a preneed arrangement, as defined in 37-19-101, and regulated under Title 37, chapter 19.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, if the applicant has an insurable interest in the life of the insured; and

(c) subject to the provisions of 33-20-1502 and this section, the beneficiary may use the proceeds for any purpose.

(4) The funeral insurance policy must state that the insurance company shall, as a condition of paying the benefits of the insurance policy, require from the funeral director, mortician, mortuary, or undertaker:

(a) a certified copy of the certificate of death of the insured or other evidence of death satisfactory to the insurance company; and

(b) a certificate of completion signed by the funeral director, mortician, or undertaker stating that the funeral director, mortician, undertaker, or mortuary has delivered all the goods and performed all the services contracted for, by, or on behalf of the insured.

(5) (a) Notwithstanding the provisions of 33-15-414, the funeral insurance policy must contain an assignability clause that allows the policy or certificate to be assigned or otherwise transferred to another funeral director, mortician, mortuary, or undertaker licensed to do business in this state in conjunction with the assumption of the contractual obligation to provide the funeral goods or services to the extent permitted by state or federal law for the purpose of the insured's eligibility for supplemental security income benefits, medicaid, or other public assistance benefits.

(b) The assignability clause may not be used by a funeral director, mortician, mortuary, or undertaker to pledge, assign, transfer, borrow from, or otherwise encumber an insurance policy assigned to it for purposes of purchasing funeral goods or services prior to delivering all of the goods and performing all of the services contracted for, by, or on behalf of the insured.

(6) After the death of a person who at any time received medicaid benefits, a funeral director, mortician, mortuary, undertaker, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who is the beneficiary of funeral insurance in excess of $5,000 in value designated to pay for the disposition of the medicaid recipient's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department of public health and human services within 30 days following the receipt of the funeral

insurance death benefit. The funds must be paid to the department regardless of any provision in a written contract, insurance policy, or other agreement entered into on or after January 1, 2008, directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the deceased medicaid recipient's estate, and the provisions of 53-6-167 do not apply to recovery of the funds by the department."

Approved April 20, 2023

## CHAPTER NO. 203

[HB 510]

AN ACT CLARIFYING WHEN THE COMMISSIONER OF POLITICAL PRACTICES SHALL PROVIDE NOTIFICATION OF A MUNICIPAL CANDIDATE'S COMPLIANCE WITH CERTAIN DISCLOSURE REQUIREMENTS IN ORDER TO APPEAR ON THE BALLOT; AMENDING SECTION 13-37-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-37-126, MCA, is amended to read:

"**13-37-126. Names not to appear on ballot.** (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by 2-2-106 or this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state and the election administrator conducting an election when a candidate or a candidate's treasurer has not complied with 2-2-106 or the provisions of this chapter and that the candidate's name may not appear on the official ballot.

(b) ~~The~~ *Except as provided in subsection (3)(c), the* commissioner shall provide the notification:

(i) 2 calendar days before the certification deadline provided in 13-10-208 for statewide primary elections and 20-20-401 for school district elections; and

(ii) 7 days before the certification deadline provided in 13-12-201 for general elections.

*(c) (i) For a municipal primary election, the commissioner shall provide the notification no later than 5 days after the candidate filing deadline.*

*(ii) For a municipal general election, the commissioner shall provide the notification no later than September 30 or, if September 30 falls on a Saturday or Sunday, no later than the preceding Friday.*"

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

Approved April 20, 2023

## CHAPTER NO. 204

[HB 518]

AN ACT PROVIDING LEGISLATIVE STANDING TO SUE, TO ENSURE COMPLIANCE WITH LEGISLATIVE ENACTMENTS; CREATING DUTIES AND AUTHORITY TO INTERVENE WHEN THE CONSTITUTIONALITY OF A STATUTE IS CHALLENGED IN A LAWSUIT; PROVIDING STANDING TO

THE LEGISLATURE BY JOINT RESOLUTION OR A POLL CONDUCTED BY THE SECRETARY OF STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, when an enactment of the Legislature is not defended or executed the Legislature suffers an institutional injury through the nullification of the Legislature's ability to enact enforceable laws, thus rendering the Legislature unable to effectively fulfill its legislative obligations in a representative democracy and a republican form of government; and

WHEREAS, the Legislature's plenary power to enact laws is a great interest of the Legislature as an institution; and

WHEREAS, compliance with existing statutory requirements is fundamental to the faithful execution of the laws; and

WHEREAS, the responsibilities of the Legislature extend to ensuring implementation of mandatory duties in statute and rule that are not being implemented or on which the compliance responsibility has not occurred; and

WHEREAS, the failure to implement statutes with duties may undermine the Legislative Branch's capacity to conduct meaningful oversight of state government, which is one of its core functions; and

WHEREAS, when a law's constitutionality is not defended or when a statute with duties is not executed, the Legislature experiences an injury of greater magnitude than the single instance of vote nullification at issue in Coleman v. Miller, 307 U.S. 433 (1939), in which the United States Supreme Court found that 20 Kansas State Senators had standing to sue to maintain the effectiveness of their votes after their votes on a measure were completely nullified; and

WHEREAS, the failure of a law with duties to be implemented is a cognizable injury in fact sufficient to confer standing to the Legislature; and

WHEREAS, the statutory authority of the Legislature to institute, intervene, and participate in litigation is not unique, as legislative interim committees have this power in section 2-4-402, MCA, regarding the Montana Administrative Procedure Act.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to grant statutory standing to sue and defend lawsuits to the Legislature in limited circumstances.

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

**Section 1. Legislative standing to institute or defend lawsuit -- compelling enforcement of legislative enactments.** (1) The legislature has standing to sue or defend a lawsuit on behalf of the legislature in the courts of this state when:

(a) a challenge to the constitutionality of legislation enacted by the legislature is at issue in a lawsuit; or

(b) (i) legislation enacted is not being implemented by an entity with the duty to execute the law, thereby impeding compliance with legislation, session law, or a statute;

(ii) the alleged injury to the legislature due to the failure to implement a statute is distinguishable from the injury to members of the public even if they suffer an injury; and

(iii) the alleged injury to the legislature would effectively be immunized from review if the legislature did not have standing.

(2) (a) Before the legislature may pursue the remedy provided in subsection (1)(b), a demand letter provided for in subsection (2)(b) must be provided to the entity with the duty to execute or implement the law. If the public officer of the entity fails to respond in writing within 30 days of receipt of the letter by

indicating that the entity will address the concerns in the letter immediately, the legislature may provide consent through the procedure in subsection (3) to initiate a lawsuit to ensure compliance with a statutory duty through a petition for mandamus. The provisions of Title 27 related to mandamus and related case law do not apply to this section. To prevail, the legislature is not required to prove that it or other parties have no alternative adequate remedy to obtain compliance with statutory duties.

(b) The demand letter provided for in subsection (2)(a) must:

(i) be in writing and reference the legislation, session law, or statute that is not being implemented by the entity;

(ii) provide any relevant information for the entity to consider regarding the alleged failure to comply with the law;

(iii) be signed by one or more sitting legislators; and

(iv) provide notice that it is issued pursuant to the authority of this section.

(3) Legislative consent to initiate an action under this section may be obtained by:

(a) a majority vote in each house on a joint resolution during a regular or special session of the legislature; or

(b) a majority vote in each house through a poll of the legislature as provided for under subsection (4) when the legislature is not in session.

(4) (a) When the legislature is not in session, if 20 or more legislators request a poll in writing pursuant to subsection (3)(b), the secretary of state shall poll the members of the legislature to determine if a majority of the members of the house of representatives and a majority of the members of the senate are in favor of a legislative declaration to pursue an action under subsection (1)(a) or (1)(b).

(b) The request must:

(i) state the conditions warranting the poll;

(ii) if applicable, contain the demand letter sent to the entity provided for in subsection (2) and any written response from the entity; and

(iii) contain a legislative declaration that addresses the action sought or issue to be addressed and the type of action to be pursued in subsection (1).

(c) Within 3 calendar days after receiving a request, the secretary of state shall send a ballot to all legislators by using any reasonable and reliable means, including electronic delivery, that contains:

(i) the legislative declaration subject to the vote; and

(ii) the date by which legislators shall return the ballot, which may not be more than 10 calendar days after the date the ballots are sent.

(d) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending the ballot by facsimile transmission or electronic mail to the office of the secretary of state. A legislator may not change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If a majority of the members of each house vote to approve the declaration, the declaration that was sent with the ballot has the force and effect authorizing the action requested in the declaration. A ballot that is not returned by the deadline established by the secretary of state is considered a vote against the declaration.

(5) Nothing in this section supersedes the authority of the attorney general to represent the state of Montana.

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

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Applicability.** [This act] applies to proceedings initiated on or after [the effective date of this act].

Approved April 20, 2023

# CHAPTER NO. 205

[HB 525]

AN ACT REVISING LAWS RELATED TO SEXUAL ASSAULT; PROVIDING A FELONY PENALTY FOR SEXUAL ASSAULT WHEN COMMITTED BY AN INDIVIDUAL PROVIDING OR PURPORTING TO PROVIDE PSYCHOTHERAPY SERVICES TO THE VICTIM; PROVIDING A MANDATORY MINIMUM PRISON TERM; REQUIRING REGISTRATION AS A SEXUAL OFFENDER; AMENDING SECTIONS 45-5-502, 46-18-205, 46-18-231, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 45-5-502, MCA, is amended to read:

"**45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) *Except as provided in subsection (3) and (4):*

(a) ~~On~~ *on* a first conviction for sexual assault, the offender shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both~~.~~*;*

(b) ~~On~~ *on* a second conviction for sexual assault, the offender shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both~~.~~*; and*

(c) ~~On~~ *on* a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

*(4) If the victim is a client receiving psychotherapy services and the offender is providing or purporting to provide psychotherapy services to the victim, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.*

~~(4)~~*(5)* An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~*(6)* (a) Subject to subsections ~~(5)(b)~~ *(6)(b)* through ~~(5)(f)~~ *(6)(f)*, consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility;

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

(v) a program participant, as defined in 52-2-802, in a private alternative adolescent residential or outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the program, as defined in 52-2-802;

(vi) the victim is a client receiving psychotherapy services and the perpetrator:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim; or

(vii) a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting.

(b) Subsection ~~(5)(a)(i)~~ *(6)(a)(i)* does not apply if one of the parties is on probation, conditional release, or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections ~~(5)(a)(iii)~~ *(6)(a)(iii)* and ~~(5)(a)(iv)~~ *(6)(a)(iv)* do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(d) Subsection ~~(5)(a)(v)~~ *(6)(a)(v)* does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a person associated with the program.

(e) Subsection ~~(5)(a)(vi)~~ *(6)(a)(vi)* does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor,

or volunteer of a facility that provides or purports to provide psychotherapy services to the client.

(f) Subsection ~~(5)(a)(vii)~~ *(6)(a)(vii)* does not apply if the individuals are married to each other."

**Section 2.** Section 46-18-205, MCA, is amended to read:

"**46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-507, incest; or

(d) 45-8-218, deviate sexual conduct.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3) *and (4)*, sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent; and

(h) 45-5-603, aggravated promotion of prostitution.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)."

**Section 3.** Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

*(viii) 45-5-502(4), sexual assault when the victim is a client receiving psychotherapy services and the offender is providing or purporting to provide psychotherapy services to the victim;*

~~(viii)~~*(ix)* 45-5-503(2) through (5), sexual intercourse without consent;

~~(ix)~~*(x)* 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

~~(x)~~*(xi)* 45-5-508, aggravated sexual intercourse without consent;

~~(xi)~~*(xii)* 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;

~~(xii)~~*(xiii)* 45-5-625(4), sexual abuse of children;

~~(xiii)~~*(xiv)* 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude, sexual servitude, or patronizing a victim of sexual servitude;

~~(xiv)~~*(xv)* 45-9-101(3), criminal possession with intent to distribute a dangerous drug; and

~~(xv)~~*(xvi)* 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

**Section 4.** Section 46-23-502, MCA, is amended to read:

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

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

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

(3) "Municipality" means an entity that has incorporated as a city or town.

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

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

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), *45-5-502(4) (if the victim is a client receiving psychotherapy services and the offender is providing or purporting to provide psychotherapy services to the victim),* 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

**Section 5. Applicability.** [This act] applies to violations of 45-5-502(4) that occur on or after [the effective date of this act].

Approved April 20, 2023

# CHAPTER NO. 206

[HB 536]

AN ACT REVISING LAWS RELATED TO WRITE-IN CANDIDATES; REQUIRING ALL WRITE-IN CANDIDATES TO FILE A DECLARATION OF INTENT; AMENDING SECTIONS 13-10-204, 13-10-211, AND 13-15-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-10-204, MCA, is amended to read:

"**13-10-204. Write-in nominations.** ~~(1)~~ An individual nominated by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

~~(a)~~*(1)* received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;

~~(b)~~*(2)* files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination; and

~~(c)~~*(3)* complies with the provisions of 13-37-126.

~~(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203.~~"

**Section 2.** Section 13-10-211, MCA, is amended to read:

"**13-10-211. Declaration of intent for write-in candidates.** (1) ~~Except as provided in subsection (7), a~~ *A* person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration must be filed no later than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on which a ballot must be available and must contain:

(a) the candidate's name, including:

(i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not been canceled as provided by law.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) A properly completed and signed declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission;

(b) in person;

(c) by mail; or

(d) by electronic mail.

(5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(6) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

~~(7) Except as provided in 13-38-201(4)(b), the requirements in subsection (1) do not apply if:~~

~~(a) an election is held;~~

~~(b) a person's name is written in on the ballot;~~

~~(c) the person is qualified for and seeks election to the office for which the person's name was written in; and~~

~~(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.~~"

**Section 3.** Section 13-15-206, MCA, is amended to read:

"**13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the official results records:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote; and

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the official results records the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted only if:

(a) ~~(i)~~ the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); ~~or~~ *and*

~~(ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and~~

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 20, 2023

# CHAPTER NO. 207

[HB 555]

AN ACT REVISING LAWS RELATED TO COUNSEL FOR CHILDREN IN ABUSE AND NEGLECT CASES; PROVIDING QUALIFICATIONS AND PRACTICE STANDARDS FOR COUNSEL REPRESENTING CHILDREN IN ABUSE AND NEGLECT CASES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LEVERAGE AND MAXIMIZE FEDERAL RESOURCES TO SUPPORT THE PROVISION OF LEGAL REPRESENTATION TO CHILDREN; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 47-1-105 AND 47-1-121, MCA.

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

**Section 1.** Section 47-1-105, MCA, is amended to read:

"**47-1-105. Director -- duties -- report -- rules.** (1) The director shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the director shall:

(a) establish the qualifications, duties, and compensation of the public defender division administrator provided for in 47-1-201, hire the public defender division administrator after considering qualified applicants, and regularly evaluate the performance of the public defender division administrator;

(b) establish the qualifications, duties, and compensation of the appellate defender division administrator provided for in 47-1-301, hire the appellate defender division administrator after considering qualified applicants, and regularly evaluate the performance of the appellate defender division administrator;

(c) establish the qualifications, duties, and compensation of the conflict defender division administrator provided for in 47-1-401, hire the conflict defender division administrator after considering qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; and

(d) establish the qualifications, duties, and compensation of the central services division administrator provided for in 47-1-119, hire the central services division administrator after considering qualified applicants, and regularly evaluate the performance of the central services division administrator.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

*(3) In addition to the director's duties to establish statewide standards under subsection (2), the director shall establish specific standards for the qualification and training of attorneys providing public defender services to a child in an abuse and neglect case. The standards must take into consideration:*

*(a) additional training required to competently represent a child, which may include:*

*(i) methods for communicating with a child in a developmentally appropriate manner;*

*(ii) methods for presenting child testimony and alternatives to direct testimony;*

*(iii) early childhood, child, and adolescent development;*

*(iv) the dynamics of abuse and neglect, child sexual abuse, trauma, grief, and attachment;*

*(v) mental health issues, substance abuse issues, and the impact of domestic violence; and*

*(vi) available services and community resources for families;*

*(b) continuing education requirements specific to representing a child; and*

*(c) practice standards for representing a child, which may include:*

*(i) ensuring the child understands the role of counsel in the proceedings, including counsel's duty to maintain confidentiality, provide loyal and independent legal representation, and to advocate for the child's position;*

*(ii) taking all steps reasonably necessary to represent the child in the proceedings, including but not limited to interviewing the child, advising the child of the child's rights, educating the child about the legal process, informing the child of the child's options, counseling the child's decisionmaking, preparing a case theory and strategy, preparing for and participating in negotiations and hearings, and drafting and submitting motions, memoranda, and orders;*

*(iii) reviewing and accepting or declining, after appropriate consultation with the child, any proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition to the proposed stipulation;*

*(iv) taking action counsel considers appropriate to expedite the proceedings and the resolution of contested issues;*

*(v) maintaining frequent and intentional contact with the child, at a minimum, prior to and after each court hearing, after every placement change, and no less than one in-person meeting every 3 months;*

*(vi) in accordance with the rules of professional conduct, communicating and collaborating with all other parties to the case;*

*(vii) investigating and taking necessary legal action regarding the child's medical, mental health, social, and educational needs and overall well-being;*

*(viii) visiting the home, residence, or any prospective residence of the child, including each time the placement is changed;*

*(ix) seeking court orders or taking any other necessary steps in accordance with the child's direction to ensure that the child's health, mental health, educational, developmental, cultural, and placement needs are met; and*

*(x) ensuring opportunities for the meaningful participation of the child in court hearings and other case events, including advising the child of the right*

*to participate in the proceedings. If the child does not want to participate or wishes to waive the right to attend after being informed of the right and the nature of the proceedings, counsel for the child shall inform the court of the child's decision not to attend.*

~~(3)~~*(4)* The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the public defender division administrator, the central services division administrator, the appellate defender division administrator, and the conflict defender division administrator;

(b) review and approve any proposal to create permanent staff positions;

(c) establish policies and procedures for handling excess caseloads;

(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system; and

(e) examine workloads and workload standards for all levels within the office of state public defender and include its findings in the biennial report provided for in 47-1-125.

~~(4)~~*(5)* The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter."

**Section 2.** Section 47-1-121, MCA, is amended to read:

"**47-1-121. Contracted services.** (1) The director shall establish standards for a statewide contracted services program to be managed by the central services division provided for in 47-1-119. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

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

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

(4) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(5) Contracting for attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

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

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

*(c) attorney qualifications necessary to provide effective assistance of counsel that meets the standards under 47-1-105(3) for counsel for a child in an abuse and neglect case;*

~~(c)~~*(d)* attorney access to support services, such as paralegal and investigator services;

~~(d)~~*(e)* attorney caseload, including the amount of private practice engaged in outside the contract;

~~(e)~~*(f)* reporting protocols and caseload monitoring processes;

~~(f)~~*(g)* a process for the supervision and evaluation of performance;

~~(g)~~*(h)* a process for conflict resolution;

~~(h)~~*(i)* continuing education requirements; and

~~(i)~~*(j)* cost of the services.

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

(7) The director shall establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

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

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

**Section 3. Department to oversee federal funds supporting legal services for children.** (1) The department shall leverage and maximize federal resources under Title IV-E of the Social Security Act to support the provision of quality legal representation to children in proceedings under Title 41, chapter 3.

(2) The department shall enter into an agreement with the office of state public defender to obtain federal reimbursement funds under Title IV-E of the Social Security Act for the provision of legal counsel to children in proceedings under Title 41, chapter 3.

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 52, chapter 2, part 1, and the provisions of Title 52, chapter 2, part 1, apply to [section 3].

Approved April 20, 2023

# CHAPTER NO. 208

[HB 560]

AN ACT REVISING LAWS RELATED TO RELINQUISHMENT OF PARENTAL RIGHTS; ALLOWING PARENTS TO ENTER INTO AGREEMENTS TO MAINTAIN CONTACT WITH THEIR CHILDREN; AND PROVIDING EXCEPTIONS.

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

**Section 1. Relinquishment of parental rights -- open adoption.** (1) (a) At any time after a child has been removed from the custody of a parent, the parent may relinquish parental rights. Prior to a parent's relinquishment of parental rights, the parent may enter into an agreement with the preadoptive parent or parents to allow for an open adoption in which the parent may maintain contact with the child.

(b) Following the relinquishment of parental rights pursuant to subsection (1)(a), the parent-child legal relationship is terminated.

(2) The agreement may be suspended or terminated if:

(a) in the case of a child who has been subsequently adopted, the adoptive parent or parents determine that continued contact with the parent is no longer in the child's best interest; or

(b) the child is 12 years of age or older and the child no longer consents to have continued contact with the parent.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 1].

Approved April 20, 2023

# CHAPTER NO. 209

[HB 579]

AN ACT REVISING DISTILLERY LAWS TO PROVIDE THAT THE LICENSED PREMISES MAY INCLUDE MORE THAN ONE BUILDING FOR MANUFACTURING PURPOSES PURSUANT TO FEDERAL LAW; CLARIFYING THAT A DISTILLERY THAT HAS MORE THAN ONE MANUFACTURING LOCATION MAY NOT OPERATE MORE THAN ONE SAMPLE ROOM; AND AMENDING SECTION 16-4-312, MCA.

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

**Section 1.** Section 16-4-312, MCA, is amended to read:

"**16-4-312. Domestic distillery.** (1) A distillery located in Montana and licensed pursuant to 16-4-311 may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces;

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury*;*

*(d) have a premises that includes more than one building for manufacturing purposes pursuant to 27 CFR 19.53 and is operated under a federal basic permit*.

(2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the department under this code, and the department shall include the distillery's liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

(3) A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for prepared servings though curbside pickup between 10 a.m. and 8 p.m. or consumption on the premises between 10 a.m. and 8 p.m. *Liquor samples provided pursuant to this subsection (3) are not permitted at more than one manufacturing premises for each license*; or

(b) sell liquor in original packaging that it produces at retail at the distillery between the hours of 8 a.m. and 2 a.m. directly to the consumer, including curbside pickup, for off-premises consumption if:

(i) not more than 1.75 liters a day is sold to an individual; and

(ii) the minimum retail price as determined by the department is charged."

Approved April 20, 2023

# CHAPTER NO. 210

[HB 584]

AN ACT PROHIBITING CERTAIN GOVERNMENT LAWSUITS AGAINST FIREARMS OR AMMUNITION MANUFACTURERS.

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

**Section 1. Government entity -- prohibitions on lawsuits related to firearms or manufacturers.** (1) Except as provided in subsection (2), a government entity may not bring suit against a firearms or ammunition manufacturer, trade association, or seller for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

(2) Nothing in this section prohibits a government entity from bringing an action against a firearms or ammunition manufacturer, trade association, or seller for recovery of damages for:

(a) breach of contract or warranty as to firearms or ammunition purchased by a government entity; or

(b) damage or harm to property owned or leased by the government entity caused by a defective firearm or ammunition.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 9, and the provisions of Title 2, chapter 9, apply to [section 1].

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 20, 2023

# CHAPTER NO. 211

[HB 585]

AN ACT ESTABLISHING A MEMORIAL FOR MONTANA'S ORGAN DONORS ON THE CAPITOL COMPLEX; REQUIRING PRIVATE FUNDING; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS.

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

**Section 1. Memorial for Montana's organ donors -- display -- private funding.** (1) Subject to 2-17-807(4) and other provisions of Title 2, chapter 17, part 8, including review by the capitol complex advisory council, a memorial honoring organ donors of Montana must be displayed on the capitol complex grounds.

(2) The cost for the procurement, installation, and maintenance of the memorial must be paid from private funds.

(3) The design, installation, maintenance, and funding of the outdoor memorial is subject to provisions of the art and memorial plan adopted by the council pursuant to 2-17-804.

**Section 2.** Section 2-17-807, MCA, is amended to read:

"**2-17-807. Approval for displays and naming buildings, spaces, and rooms.** (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex

or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.

(2) (a) Except as provided in subsections (2)(b) through (2)(g), a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) Except as provided in subsection (2)(f), a public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

(e) The justice building located at 215 north Sanders in Helena must be named after Joseph P. Mazurek, and a plaque and memorial commemorating him may be displayed on the capitol complex grounds.

(f) The Montana heritage center must be named after Betty Babcock, and a plaque commemorating her must be displayed there.

(g) The statue or bust of Judy Martz authorized in 2-17-808(2)(f) may continue to be displayed in the capitol or on the grounds immediately surrounding the capitol.

*(h) The memorial honoring organ donors of Montana authorized in 2-17-808(2) may continue to be displayed on the grounds surrounding the capitol.*

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds. (Subsection (2)(g) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

**Section 3.** Section 2-17-808, MCA, is amended to read:

"**2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays.** (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit;

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors;

(i) a plaque commemorating former representative Francis Bardanouve and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanouve; and

(j) a mural honoring the historical contributions of women as community builders.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square;

(e) the monument of the ten commandments; ~~and~~

(f) a statue or bust commemorating Judy Martz, Montana's first woman governor~~.~~*; and*

*(g) a memorial honoring organ donors of Montana, encouraging individuals to register as donors, and providing a contemplative space to serve as a symbol of hope for those who are waiting for an organ transplant.*

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building--landscape beautification project, Montana veterans, Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers--mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell;

(e) the plaque and Lou Peters award commemorating Karl Ohs; and

(f) the plaque and memorial commemorating Joseph P. Mazurek.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4). (Subsection (2)(f) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 8, and the provisions of Title 2, chapter 17, part 8, apply to [section 1].

**Section 5. Contingent voidness.** If the memorial provided for in [section 1] is not installed by October 1, 2028, then [this act] is void.

Approved April 20, 2023

# CHAPTER NO. 212

[HB 593]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PUBLISH AN ANNUAL PUBLIC REPORT OF NONRESIDENT LICENSE SALES; AMENDING SECTION 87-1-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 87-1-201, MCA, is amended to read:

"**87-1-201. Powers and duties.** (1) Except as provided in subsection (12), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (12), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing

licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) Except as provided in subsection (12), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of

determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) The department shall report current sage grouse population numbers, including the number of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic population data available from the department or any other source.

(12) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

*(13) The department shall publish an annual public report that shows the number of licenses sold to nonresidents in the previous license year for each species in which the purchase of a license or permit is required. The report must also show how many licenses were issued through opportunities or programs for nonresidents, such as those for the following:*

*(a) youths;*

*(b) college students;*

*(c) nonresidents who were former residents;*

*(d) nonresident licenses purchased by utilizing an outfitter preference point;*

*(e) sponsorships by a landowner, family member, or current Montana resident; or*

*(f) any other license opportunity or program for nonresidents.*

**Section 2. Effective date.** [This act] is effective March 1, 2024.

Approved April 20, 2023

# CHAPTER NO. 213

[HB 639]

AN ACT ESTABLISHING REDUCTION OF RECIDIVISM AS A PURPOSE OF THE DEPARTMENT OF CORRECTIONS; AND AMENDING SECTION 53-1-201, MCA.

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

**Section 1.** Section 53-1-201, MCA, is amended to read:

"**53-1-201. Purpose of department of corrections.** The department of corrections shall use at maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the field of adult and youth corrections; ~~and~~

(2) provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of formerly

adjudicated delinquent youth who are referred or committed to the department*; and*

*(3) minimize recidivism among offenders during and after their participation in the department's programs and monitor the rate of recidivism to determine the success of efforts to reduce recidivism*."

Approved April 20, 2023

## CHAPTER NO. 214

[HB 663]

AN ACT ESTABLISHING THE MONTANA VETERANS HALL OF FAME; AND PROVIDING RULEMAKING AUTHORITY.

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

**Section 1. Montana veterans hall of fame.** (1) There is established the Montana veterans hall of fame.

(2) Veterans recognized with the Montana governor's veteran commendation are members of the Montana veterans hall of fame.

(3) The governor may direct the board of veterans' affairs to assume responsibility for accepting and adjudicating nominations to the Montana veterans hall of fame. The board may adopt rules necessary to implement this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, and the provisions of Title 10, chapter 2, apply to [section 1].

Approved April 20, 2023

## CHAPTER NO. 215

[HB 665]

AN ACT REVISING LAWS RELATED TO INSURANCE COVERAGE OF PREVENTATIVE, DIAGNOSTIC, AND SUPPLEMENTAL BREAST EXAMINATIONS; PROVIDING DEFINITIONS; AND AMENDING SECTION 33-22-132, MCA.

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

**Section 1.** Section 33-22-132, MCA, is amended to read:

"**33-22-132. Coverage for *minimum* mammography *and other breast* examinations.** (1) Each group or individual medical expense and blanket disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide ~~minimum mammography examination~~ coverage *of minimum mammography and other breast examinations as provided in this section.*

(2) For the purpose of this section, *the following definitions apply:*

*(a) "Cost-sharing requirement" means a deductible, coinsurance, copayment, and any maximum limitation on the application of a deductible, coinsurance, copayment, or similar out-of-pocket expense.*

*(b) (i) "Diagnostic breast examination" means a medically necessary and clinically appropriate examination of the breast that is used to evaluate an abnormality seen or suspected from a screening examination for breast cancer or detected by another means of examination.*

*(ii) The term includes examinations using diagnostic mammography, breast magnetic resonance imaging, or breast ultrasound.*

*(c)* "~~minimum~~*Minimum* mammography examination" means:

~~(a)~~*(i)* one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

~~(b)~~*(ii)* a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

~~(c)~~*(iii)* a mammogram each year for a woman who is 50 years of age or older.

*(d) (i) "Supplemental breast examination" means a medically necessary and appropriate examination of the breast that is used to screen for breast cancer when there is no abnormality seen or suspected and is based on personal or family medical history or other factors that may increase a person's risk of breast cancer.*

*(ii) The term includes examination using breast magnetic resonance imaging or breast ultrasound.*

(3) A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each *minimum* mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

*(4) (a) Except as provided in subsection (4)(b), a group health plan or a health insurance issuer offering group or individual health insurance coverage may not impose any cost-sharing requirements for a diagnostic breast examination or supplemental breast examination when the plan or coverage provides screening benefits, supplemental breast examinations, and diagnostic breast examinations furnished to an individual enrolled under the plan or coverage.*

*(b) If, under federal law, application of subsection (4)(a) would result in health savings account ineligibility under section 223 of the federal Internal Revenue Code, this requirement may apply only, for health savings account-qualified high deductible health plans with respect to the deductible of the plan after the enrollee has satisfied the minimum deductible under section 223, except for with respect to items or services that are preventive care pursuant to section 223(c)(2)(C) of the federal Internal Revenue Code, in which case the requirements of subsection (4)(a) apply regardless of whether the minimum deductible under section 223 has been satisfied.*

~~(4)~~*(5)* This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies."

Approved April 20, 2023

# CHAPTER NO. 216

[HB 710]

AN ACT REVISING LAWS REGARDING PHARMACISTS ADMINISTERING IMMUNIZATIONS; ALLOWING ADMINISTRATION BY PHARMACY INTERNS AND TECHNICIANS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 37-7-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-7-105, MCA, is amended to read:

"**37-7-105. Administration of immunizations.** (1) An immunization-certified pharmacist may:

(a) prescribe and administer the following immunizations without a collaborative practice agreement in place:

(i) influenza to individuals who are 12 years of age or older;

(ii) pneumococcal, tetanus, diptheria, and pertussis to individuals who are 18 years of age or older; and

(iii) herpes zoster to those individuals identified in the guidelines published by the United States centers for disease control and prevention's advisory committee on immunization practices; and

(b) administer immunizations to individuals 7 years of age or older as provided by the most recent guidelines by vaccine and age group published by the United States centers for disease control and prevention and as determined within a collaborative practice agreement.

(2) In the event of an adverse reaction, a pharmacist may administer epinephrine or diphenhydramine to:

(a) an individual who is 12 years of age or older; and

(b) a child who is 7 years of age or older and under 12 years of age within a collaborative practice agreement.

(3) If a pharmacist provides an immunization that is part of a series requiring multiple doses over time, the pharmacist shall notify the individual or the individual's legal representative at the time the next immunization in the series is due to be administered by sending a notice to the individual or representative that the followup immunization is needed to fulfill the series requirement.

(4) A pharmacist who administers an immunization pursuant to this section shall:

(a) ensure that the individual who is being immunized is assessed for contraindications to immunization;

(b) ensure that the individual who is being immunized or the individual's legal representative receives a copy of the appropriate vaccine information statement;

(c) if the pharmacist is notified of an adverse reaction, report the reaction to:

(i) the patient's primary health care provider, if the patient identifies one;

(ii) the medical provider or providers with whom the pharmacist has a collaborative practice agreement; and

(iii) the vaccine adverse event reporting system established under the United States department of health and human services;

(d) provide a signed certificate of immunization to the primary health care provider, if known, of each individual who is immunized and to the individual who is immunized that includes the individual's name, date of immunization, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number;

(e) create a record for each immunization, in which the individual's name, date, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number are included, and maintain the record for 7 years from the date the immunization was administered or until 7 years after the individual reaches 18 years of age, whichever is later; and

(f) offer the patient the opportunity to have the immunization information reported to the state immunization information system.

*(5) (a) A pharmacist may delegate the administration of immunizations authorized under this section only to the following persons who meet the requirements of subsection (5)(b):*

*(i) a licensed intern who is under the supervision of the pharmacist; or*

*(ii) a pharmacy technician who is acting under a technician utilization plan and the supervision of the pharmacist.*

*(b) A licensed intern or a pharmacy technician administering immunizations must hold a current certification to provide basic cardiac life support and must have completed a practical training program that is:*

*(i) accredited by the accreditation council for pharmacy education or a similar health authority or professional body approved by the board; and*

*(ii) at a minimum, includes instruction in hands-on injection technique and recognizing and treating emergency reactions to vaccines.*

~~(5)~~*(6)* For the purposes of this section, "vaccine information statement" means an information sheet that is produced by the United States centers for disease control and prevention that explains the benefits and risks associated with a vaccine to a vaccine recipient or the legal representative of the vaccine recipient."

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

Approved April 20, 2023

# CHAPTER NO. 217

[HB 767]

AN ACT PROVIDING BOARD OF LIVESTOCK REVIEW OF PROPOSED BRANDS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 81-3-103, MCA.

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

**Section 1.** Section 81-3-103, MCA, is amended to read:

"**81-3-103. Application for recording -- record of brands.** (1) A person desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used. An applicant may apply for a seasonal mark or brand that is designated for use only for a specific period of time and that is subject to renewal upon termination of that period.

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person other than the applicant. The department shall designate the position on the animals where the mark or brand must be placed and the species of animals on which the mark or brand may be used.

*(3) The board may review applications that contain characters or images within a proposed mark or brand that is not currently recorded with the department.*

~~(3)~~*(4)* The department shall ~~keep a record in a book kept by it for that purpose of the~~ *record each* particular mark or brand, the position on the animals where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it."

Approved April 20, 2023

# CHAPTER NO. 218

[HB 777]

AN ACT ADOPTING THE INTERSTATE COUNSELING COMPACT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING DEFINITIONS.

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

**Section 1. Enactment -- interstate counseling compact.** The interstate compact on counseling is enacted and entered into law with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1

PURPOSE

The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

(1) increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;

(2) enhance the states' ability to protect the public's health and safety;

(3) encourage the cooperation of member states in regulating multistate practice for licensed professional counselors;

(4) support spouses of relocating active duty military personnel;

(5) enhance the exchange of licensure, investigative, and disciplinary information among member states;

(6) allow for the use of telehealth technology to facilitate increased access to professional counseling services;

(7) support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;

(8) invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;

(9) eliminate the necessity for licenses in multiple states; and

(10) provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

SECTION 2

DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

(4) "Continuing competence/education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

(5) "Counseling compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(6) "Current significant investigative information" means:

(a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.

(7) "Data system" means a repository of information about licensees, including but not limited to continuing education, examination, licensure, investigative, privilege to practice, and adverse action information.

(8) "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the national practitioners data bank (NPDB).

(9) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.

(10) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(11) "Home state" means the member state that is the licensee's primary state of residence.

(12) "Impaired practitioner" means an individual who has a condition(s) that may impair their ability to practice as a licensed professional counselor without some type of intervention and may include but are not limited to alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

(13) "Investigative information" means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation.

(14) "Jurisprudence requirement", if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.

(15) "Licensed professional counselor" means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

(16) "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.

(17) "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors.

(18) "Member state" means a state that has enacted the compact.

(19) "Privilege to practice" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.

(20) "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

(21) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.

(22) "Rule" means a regulation promulgated by the commission that has the force of law.

(23) "Single state license" means a licensed professional counselor license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

(24) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of professional counseling.

(25) "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.

(26) "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

SECTION 3
STATE PARTICIPATION IN THE COMPACT

(1) To participate in the compact, a state must currently:

(a) license and regulate licensed professional counselors;

(b) require licensees to pass a nationally recognized exam approved by the commission;

(c) require licensees to have a 60 semester-hour (or 90 quarter-hour) master's degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the following topic areas:

(i) professional counseling orientation and ethical practice;

(ii) social and cultural diversity;

(iii) human growth and development;

(iv) career development;

(v) counseling and helping relationships;

(vi) group counseling and group work;

(vii) diagnosis and treatment; assessment and testing;

(viii) research and program evaluation; and

(ix) other areas as determined by the commission;

(d) require licensees to complete a supervised postgraduate professional experience as defined by the commission;

(e) have a mechanism in place for receiving and investigating complaints about licensees.

(2) A member state shall:

(a) participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;

(b) notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(c) implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

(i) A member state shall fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search and shall use the results in making licensure decisions.

(ii) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(d) comply with the rules of the commission;

(e) require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

(f) grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules; and

(g) provide for the attendance of the state's commissioner to the counseling compact commission meetings.

(3) Member states may charge a fee for granting the privilege to practice.

(4) Individuals not residing in a member state shall continue to be able to apply for a member state's single state license as provided under the laws of each member state. However, the single state license granted to these individuals may not be recognized as granting a privilege to practice professional counseling in any other member state.

(5) Nothing in this compact may affect the requirements established by a member state for the issuance of a single state license.

(6) A license issued to a licensed professional counselor by a home state to a resident in that state must be recognized by each member state as authorizing a licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

SECTION 4

PRIVILEGE TO PRACTICE

(1) To exercise the privilege to practice under the terms and provisions of the compact, the licensee:

(a) shall hold a license in the home state;

(b) shall have a valid United States social security number or national practitioner identifier;

(c) must be eligible for a privilege to practice in any member state in accordance with Section 4(4), (7), and (8);

(d) may not have had any encumbrance or restriction against any license or privilege to practice within the previous two (2) years;

(e) shall notify the commission that the licensee is seeking the privilege to practice within a remote state(s);

(f) shall pay any applicable fees, including any state fee, for the privilege to practice;

(g) shall meet any continuing competence/education requirements established by the home state;

(h) shall meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a privilege to practice; and

(i) shall report to the commission any adverse action, encumbrance, or restriction on a license taken by any nonmember state within 30 days from the date the action is taken.

(2) The privilege to practice is valid until the expiration date of the home state license. The licensee must comply with the requirements of Section 4(1) to maintain the privilege to practice in the remote state.

(3) A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

(4) A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.

(5) If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until the following occur:

(a) the home state license is no longer encumbered; and

(b) the licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two (2) years.

(6) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4(A) to obtain a privilege to practice in any remote state.

(7) If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until the following occur:

(a) the specific period of time for which the privilege to practice was removed has ended;

(b) all fines have been paid; and

(c) the licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two (2) years.

(8) Once the requirements of Section 4(7) have been met, the licensee must meet the requirements in Section 4(A) to obtain a privilege to practice in a remote state.

SECTION 5
OBTAINING A NEW HOME STATE LICENSE
BASED ON A PRIVILEGE TO PRACTICE

(1) A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

(2) If a licensed professional counselor changes primary state of residence by moving between two member states:

(a) The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.

(b) Upon receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in Section 4 via the data system, without need for primary source verification except for:

(i) a federal bureau of investigation fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544;

(ii) other criminal background checks as required by the new home state; and

(iii) completion of any requisite jurisprudence requirements of the new home state.

(c) The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(d) Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in Section 4, the new home state may apply its requirements for issuing a new single state license.

(e) The licensed professional counselor shall pay all applicable fees to the new home state in order to be issued a new home state license.

(3) If a licensed professional counselor changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria must apply for issuance of a single state license in the new state.

(4) Nothing in this compact may interfere with a licensee's ability to hold a single state license in multiple states, however for the purposes of this compact, a licensee must have only one home state license.

(5) Nothing in this compact may affect the requirements established by a member state for the issuance of a single state license.

SECTION 6
ACTIVE DUTY MILITARY PERSONNEL
OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state, or through the process outlined in Section 5.

SECTION 7
COMPACT PRIVILEGE
TO PRACTICE TELEHEALTH

(1) Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with Section 3 and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

(2) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

SECTION 8
ADVERSE ACTIONS

(1) In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to take adverse action against a licensed professional counselor's privilege to practice within that member state and issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located. Only the home state shall have the power to take

adverse action against a licensed professional counselor's license issued by the home state.

(2) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(3) The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.

(4) A member state, if otherwise permitted by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of cases resulting from any adverse action taken against that licensed professional counselor.

(5) A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

(6) Joint Investigations:

(a) In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(7) If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.

(8) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(9) Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

SECTION 9
ESTABLISHMENT OF COUNSELING
COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the counseling compact commission:

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(2) Membership, Voting, and Meetings

(a) Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

(b) The delegate must be either:

(i) a current member of the licensing board at the time of appointment, who is a licensed professional;

(ii) a counselor or public member; or

(iii) an administrator of the licensing board.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state licensing board shall fill any vacancy occurring on the commission within 60 days.

(e) Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(g) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

(h) The commission shall by rule establish a term of office for delegates and may by rule establish term limits.

(3) The commission must have the following powers and duties:

(a) establish the fiscal year of the commission;

(b) establish bylaws;

(c) maintain its financial records in accordance with the bylaws;

(d) meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(e) promulgate rules that must be binding to the extent and in the manner provided for in the compact;

(f) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law may not be affected;

(g) purchase and maintain insurance and bonds;

(h) borrow, accept, or contract for services of personnel, including but not limited to employees of a member state;

(i) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(j) accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(k) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety;

(l) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(m) establish a budget and make expenditures;

(n) borrow money;

(o) appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and

consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(p) provide and receive information from, and cooperate with, law enforcement agencies;

(q) establish and elect an executive committee; and

(r) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of professional counseling licensure and practice.

(4) The Executive Committee

(a) The executive committee shall have the power to act on behalf of the commission according to the terms of this compact.

(b) The executive committee shall be composed of up to eleven (11) members:

(i) seven voting members who are elected by the commission from the current membership of the commission; and

(ii) up to four (4) ex-officio, nonvoting members from four (4) recognized national professional counselor organizations. The ex-officio members will be selected by their respective organizations.

(c) The commission may remove any member of the executive committee as provided in bylaws.

(d) The executive committee shall meet at least annually.

(e) The executive committee must have the following duties and responsibilities:

(i) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice;

(ii) ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) prepare and recommend the budget;

(iv) maintain financial records on behalf of the commission;

(v) monitor compact compliance of member states and provide compliance reports to the commission;

(vi) establish additional committees as necessary; and

(vii) other duties as provided in rules or bylaws.

(5) Meetings of the Commission

(a) All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 11.

(b) The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission shall discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline, or other matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigative records compiled for law enforcement purposes;

(ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) matters specifically exempted from disclosure by federal or member state statute.

(c) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(6) Financing of the Commission

(a) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(c) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(d) The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) Qualified Immunity, Defense, and Indemnification

(a) The members, officers, executive director, employees, and representatives of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this paragraph may be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to

impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10
DATA SYSTEM

(1) The commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(a) identifying information;

(b) licensure data;

(c) adverse actions against a license or privilege to practice;

(d) nonconfidential information related to alternative program participation;

(e) any denial of application for licensure, and the reason(s) for such denial;

(f) current significant investigative information; and

(g) other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state will only be available to other member states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

SECTION 11
RULEMAKING

(1) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers

granted hereunder, then such an action by the commission must be invalid and have no force or effect.

(2) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments must become binding as of the date specified in each rule or amendment.

(3) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four (4) years of the date of adoption of the rule, then such rule may have no further force and effect in any member state.

(4) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(5) Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) on the website of the commission or other publicly accessible platform; and

(b) on the website of each member state professional counseling licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(6) The notice of proposed rulemaking must include:

(a) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) the text of the proposed rule or amendment and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

(d) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(7) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

(8) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(a) at least twenty-five (25) persons;

(b) a state or federal governmental subdivision or agency; or

(c) an association having at least twenty-five (25) members.

(9) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings will be recorded. A copy of the recording will be made available on request.

(d) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(10) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(11) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(12) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(13) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(a) meet an imminent threat to public health, safety, or welfare;

(b) prevent a loss of commission or member state funds;

(c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(d) protect public health and safety.

(14) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision must be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 12
OVERSIGHT, DISPUTE RESOLUTION,
AND ENFORCEMENT

(1) Oversight

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder must have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact, which may affect the powers, responsibilities, or actions of the commission.

(c) The commission must be entitled to receive service of process in any such proceeding and must have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission must render a judgment or order void as to the commission, this compact, or promulgated rules.

(2) Default, Technical Assistance, and Termination

If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and/or any other action to be taken by the commission; and

(b) provide remedial training and specific technical assistance regarding the default.

(3) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(4) Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(6) The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(7) The defaulting state may appeal the action of the commission by petitioning the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney fees.

(8) Dispute Resolution

(a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(9) Enforcement

(a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney fees.

(c) The remedies herein may not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 13
DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact must come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, must be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules must be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission must have the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the same.

(a) A member state's withdrawal may not take effect until six (6) months after enactment of the repealing statute.

(b) Withdrawal may not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(4) Nothing contained in this compact may be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 14
CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact must be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact must be held contrary to the constitution of any member state, the compact must remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 15
BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.

(2) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(3) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(4) Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding upon the member states.

(5) All permissible agreements between the commission and the member states are binding in accordance with their terms.

(6) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 23, and the provisions of Title 37, chapter 23, apply to [section 1].

Approved April 20, 2023

# CHAPTER NO. 219

[HB 809]

AN ACT REVISING TRAFFIC VIOLATION LAWS; REVISING STANDARDS FOR WORK ZONE BOUNDARIES; PROVIDING A SPECIFIC DISTANCE FOR ENHANCED PENALTIES IF A TRAFFIC VIOLATION OCCURS IN PROXIMITY TO A HIGHWAY WORKER; AND AMENDING SECTION 61-8-314, MCA.

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

**Section 1.** Section 61-8-314, MCA, is amended to read:

"**61-8-314. Traffic violations in ~~construction zone and~~ work zone -- definitions.** (1) As used in this section, the following definitions apply:

(a) "Highway worker" has the same meaning as in 61-8-301.

(b) "Public highway" has the same meaning as in 60-1-103.

(c) "Work zone" means an area on a public highway or on the adjacent right-of-way where construction, repair, maintenance, or survey work is being performed by the department of transportation, a local authority, a utility company, or a private contractor with the department of transportation or with a local authority. The boundaries of the work zone must be clearly identified by the posting of signs.

(2) A person may not operate a motor vehicle in a work zone on a public highway in violation of any of the provisions of part 3 of this chapter.

(3) The speed limit in a work zone must be set by the department of transportation or the local authority based on traffic conditions or the condition of the construction, repair, maintenance, or survey project.

(4) (a) If the department of transportation, the local authority, the utility company, or the private contractor determines, based on traffic conditions or the condition of the construction, repair, maintenance, or survey project, that special speed limits in work zones are warranted, then the department, the local authority, the utility company, or the private contractor shall post signs that:

(i) conform to the department of transportation's manual on uniform traffic control devices;

(ii) indicate the boundaries of the work zone; and

(iii) display the speed limit in effect within the work zone.

(b) The department of transportation, the local authority, the utility company, or the private contractor shall clearly indicate at the boundary of a work zone that a person who violates any of the provisions of part 3 of this chapter in the work zone is subject to the fine provided in subsection (5)(a).

~~(c) The boundaries of the work zone may not exceed 500 feet in advance of and beyond the actual construction activity.~~

~~(d)~~*(c)* The department of transportation, the local authority, the utility company, or the private contractor shall remove or cover the signs when no work is in progress and no hazard exists.

(5) A person convicted of a traffic violation in a work zone is guilty of a misdemeanor. ~~Upon~~ *On* arrest and conviction:

(a) if a highway worker was present in the work zone at the time ~~and place~~ of the traffic violation *and within 1,000 feet of the traffic violation*, the person shall be punished by a fine of not less than double the penalty provided for the violation in part 7 of this chapter; or

(b) if no highway worker was present in the work zone at the time and place of the traffic violation, the person is subject to the penalty provided for the violation in part 7 of this chapter."

Approved April 20, 2023

# CHAPTER NO. 220

[HB 615]

AN ACT REVISING THE REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR REAL ESTATE BROKER AND SALESPERSON LICENSEES; REVISING DEDUCTIBLE REQUIREMENTS; AMENDING SECTION 37-51-325, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-51-325, MCA, is amended to read:

"**37-51-325. Professional liability insurance required -- errors and omissions insurance coverage -- policy requirements.** (1) A real estate broker or salesperson with an active real estate license under this chapter must maintain continuous professional liability insurance coverage that meets the requirements of this section during the period of licensure. The insurance must cover the broker or salesperson for activities contemplated under Title 37, chapter 51, part 3, including errors and omissions by the real estate broker or salesperson.

(2) A real estate broker or salesperson with an active real estate license under this chapter must be covered by professional liability insurance through a policy:

(a) issued to real estate broker or salesperson licensees provided on a group policy basis that is approved by the board;

(b) obtained by real estate broker or salesperson licensees independently; or

(c) issued to the firm with which a real estate broker or salesperson license is affiliated.

(3) All policies issued under this chapter must:

(a) be issued by an insurer licensed under Title 33 to provide professional liability insurance;

(b) offer prior acts coverage to an insured who maintains continuous past insurance coverage;

(c) provide an automatic 60-day extended reporting period to report a claim if the policy is cancelled or not renewed for any reason other than nonpayment of premium or a deductible; and

(d) offer an optional extended reporting of not less than 365 days to report a claim, as long as the insured requests the extended reporting period and pays

any additional premium for the extended reporting period within 60 days after expiration or cancellation of the policy.

(4) (a) A professional liability insurance policy must be issued to the board and must cover a group of real estate brokers and salespersons licensed under Title 37, chapter 51, part 3, as named insureds. The board may request bids from insurers for the group policy and may use a limited solicitation under 18-4-305. The maximum contract period between the insurer and the board is seven consecutive policy terms, although the board may place the contract out for bid at the end of any policy period. A policy term is for a year. A real estate broker or salesperson licensee may not be denied coverage or be cancelled by the group policy.

(b) The group policy must:

(i) have a minimum per-claim limit of $100,000;

(ii) have a minimum annual aggregate limit of $300,000;

(iii) have a deductible maximum of $2,500 a claim for damages; and

(iv) provide coverage that is specific to the real estate broker or salesperson licensee regardless of changes in supervising broker.

(5) If the board is unable to obtain a professional liability insurance policy as described in subsection (4) on terms and conditions the board determines are commercially reasonable, the requirements of this section do not apply to the licensing period for which the policy is sought.

(6) A professional liability insurance policy may be independently issued to a real estate broker or salesperson licensee. The individual policy must:

(a) have a minimum per-claim limit of $100,000;

(b) have a minimum annual aggregate limit of $300,000; and

(c) have a deductible maximum of $2,500 a claim for damages.

(7) A professional liability insurance policy issued to the firm with which a real estate broker or salesperson licensee is affiliated must:

(a) have a minimum per-claim limit of $100,000;

(b) have a minimum annual aggregate limit of $1 million; and

~~(c) provide for a deductible not to exceed $10,000 a claim to be paid by the firm with which a real estate broker or salesperson licensee is affiliated~~

*(c) have a maximum deductible as follows:*

*(i) $10,000 a claim; or*

*(ii) greater than $10,000 a claim but not to exceed $100,000 a claim, provided the firm has obtained written approval from the board, based on rules adopted by the board, that the firm is financially able to pay the difference between the amount of the deductible set forth in the firm's professional liability insurance policy and $10,000.*

(8) An applicant seeking to obtain a real estate broker or salesperson license or renew an active real estate broker or salesperson license shall prove to the board compliance with the insurance requirements of this section. A real estate broker or salesperson licensee who fails to produce proof of coverage on request by the board or its designee is subject to administrative suspension or disciplinary action as determined by the board.

(9) For purposes of this section, the following definitions apply:

(a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as a policy term.

(b) "Claims-made and reported policy" means an insurance policy written on a claims-made and reported basis, which provides coverage for claims first made against the insured and first reported to the insurer during the insured's policy period for acts, errors, or omissions that occur after the insured's retroactive date.

(c) "Extended reporting period" means a designated period of time after expiration or cancellation of a claims-made and reported policy during which a claim may be made and reported as if the claim had been made and reported during the policy period.

(d) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising from the same or a related claim.

(e) "Prior acts coverage" means coverage under a policy for claims made against the insured and reported to the insurer that arise from acts, errors, or omissions in services rendered by an insured prior to inception of the current policy period.

(f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance, or a binder of insurance.

(g) "Retroactive date" means a provision, found in many claims-made and reported policies, that the policy may not cover claims for injuries or damages that occurred before the retroactive date even if the claim is first made during the policy period."

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

Approved April 24, 2023

# CHAPTER NO. 221

[HB 664]

AN ACT DIRECTING THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF JUSTICE TO STUDY THE FEASIBILITY OF DRIVER'S LICENSE RENEWAL KIOSKS; ESTABLISHING A REPORTING REQUIREMENT; AND DIRECTING THE DIVISION TO REPORT TO THE TRANSPORTATION INTERIM COMMITTEE.

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

**Section 1. License renewal kiosk.** The motor vehicle division of the department of justice shall study the feasibility of the use of driver's license renewal kiosks in Montana and shall report prior to September 2024 to the transportation interim committee created in 5-5-233 regarding any statutory, fiscal, or other impediments to implementing the use of driver's license renewal kiosks.

Approved April 24, 2023

# CHAPTER NO. 222

[HB 675]

AN ACT AUTHORIZING A COUNTY WATER AND/OR SEWER DISTRICT TO PURSUE CONSOLIDATION WITH A MUNICIPALITY WHEN MORE THAN 60% OF THE DISTRICT'S CUSTOMERS RESIDE WITHIN THE MUNICIPALITY'S CITY LIMITS AND THE DISTRICT PURCHASES ITS WATER FROM THE MUNICIPALITY; PROVIDING A REQUIREMENT FOR THE CONSOLIDATION PLAN; AND PROVIDING FOR THE DISTINCTION CONSIDERATION OF AND OUTCOMES FOR A DISTRICT TERRITORY WITHIN CITY LIMITS AND OUTSIDE OF CITY LIMITS.

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

**Section 1. Consolidation plan.** (1) If more than 60% of a district's customers reside within the city limits of a municipality and the district

purchases its water from the municipality, the district may initiate a consolidation plan with the municipality.

(2) The consolidation plan must:

(a) provide for adjustment of existing bonded indebtedness and other obligations in a manner that will provide for a fair and equitable distribution of the burden of debt service;

(b) provide for the establishment of the service areas;

(c) outline the transfer or other disposition of property and other rights, claims, or assets of consolidation under this section;

(d) provide for the transfer, reorganization, dissolution, absorption, or other adjustment of boundaries as necessary;

(e) consider separately the disposition of the district territory within the city limits and the district territory outside of the city limits; and

(f) include any other provisions that are consistent with state law.

(3) The consolidation plan may grant the municipality the authority to transfer all rights-of-way or other entities without requiring the municipality to hold a referendum.

(4) If the district territory outside of the city limits is not consolidated into the municipal facilities under this section, the district shall:

(a) continue to operate services for the territory outside of the city limits; or

(b) request the board of county commissioners to assume the district's provision of services and financial obligations for the territory outside of the city limits.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 13, part 23, and the provisions of Title 7, chapter 13, part 23, apply to [section 1].

Approved April 24, 2023

# CHAPTER NO. 223

[SB 17]

AN ACT REVISING OVERSIGHT DUTIES OF THE STATEWIDE STREAM GAUGE NETWORK BY THE GOVERNOR'S DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE; ELIMINATING THE STREAM GAUGE OVERSIGHT WORK GROUP; AMENDING SECTION 2-15-3308, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-15-3308, MCA, is amended to read:

"**2-15-3308. (Temporary) Drought and water supply advisory committee -- stream gauge oversight work group.** (1) There is a drought and water supply advisory committee in the department of natural resources and conservation.

(2) The drought and water supply advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent federal and local government agencies and public and private interests affected by drought, flooding, or water supply may also be appointed by the governor.

(3) The drought and water supply advisory committee shall:

(a) with the approval of the governor, develop and implement a state plan that considers drought and flooding, mitigation, and response;

(b) review and report drought and water supply monitoring information to the public;

(c) coordinate timely drought and flooding impact assessments and maintain regular communication with the United States drought monitor, the national drought mitigation center, the division of disaster and emergency services, the national weather service, and other appropriate local, state, tribal, and federal partners;

(d) identify areas of the state with a high probability of drought or flooding and target reporting and assistance efforts to those areas in coordination with local, state, tribal, and federal agencies;

(e) upon request, assist in organizing local advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local advisory committees;

(g) promote ideas and activities for groups and individuals to consider that may reduce vulnerability to drought or flooding and improve seasonal forecasting of water supply; and

(h) select members of the committee to serve on a stream gauge oversight work group.

(4) The drought and water supply advisory committee shall meet, at a minimum, on or around October 15 and March 15 of each year to assess moisture conditions and forecasts and, as appropriate, begin preparations for drought or flood mitigation.

(5) By April 15 of each year, the drought and water supply advisory committee shall submit a report to the governor's office that, to the extent possible, describes the potential for drought or flooding in the coming year, describes the current water supply conditions of the state, taking into consideration winter precipitation, and provides an assessment of the cumulative water supply status.

(6) By July 1 of each year, the drought and water supply advisory committee shall submit a report to the governor's office evaluating the potential for drought for the remainder of the calendar year. If the report identifies a potential for drought that is likely to cause adverse impacts to human health and safety, environmental quality, or both, the committee shall notify the division of disaster and emergency services and county commissioners, tribal governments, conservation districts, and local watershed groups in the geographic location potentially impacted by drought and the types of impacts likely to occur.

(7) (a) The stream gauge oversight work group shall meet at least semiannually to review:

(i) locations, uses, and funding arrangements for the stream gauge network of the U.S. geological survey; and

(ii) priorities, needs, and expectations of those funding the maintenance and operations of these stream gauges and those using data measured by these stream gauges.

(b) The work group shall create annually a stream gauge infrastructure work plan, which may include:

(i) a comprehensive overview of the existing stream gauge network;

(ii) a review of options for funding the maintenance and operations of the stream gauge network, including use of private funds, consolidated agreements, or multipayer payments;

(iii) a proposal for stream gauge priorities;

(iv) cost-effective and reasonable alternatives to stream gauges, including gauges that are not part of the U.S. geological survey's stream gauge network, if applicable;

(v) oversight of recommendations and activities related to any legislative study of stream gauges; and

(vi) coordination of information regarding stream gauge funding recommendations and requests from state and federal agencies.

(c) The work group shall report to the water policy interim committee in accordance with 5-11-210.

(8) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought and water supply advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought or flood planning, preparation, coordination, and mitigation. (Terminates June 30, 2023--sec. 7, Ch. 298, L. 2019.)

**2-15-3308. (Effective July 1, 2023) Drought and water supply advisory committee --** ***stream gauge oversight.*** (1) There is a drought and water supply advisory committee in the department of natural resources and conservation.

(2) The drought and water supply advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent federal and local government agencies and public and private interests affected by drought, flooding, or water supply may also be appointed by the governor.

(3) The drought and water supply advisory committee shall:

(a) with the approval of the governor, develop and implement a state plan that considers drought and flooding, mitigation, and response;

(b) review and report drought and water supply monitoring information to the public;

(c) coordinate timely drought and flooding impact assessments and maintain regular communication with the United States drought monitor, the national drought mitigation center, the division of disaster and emergency services, the national weather service, and other appropriate local, state, tribal, and federal partners;

(d) identify areas of the state with a high probability of drought or flooding and target reporting and assistance efforts to those areas in coordination with local, state, tribal, and federal agencies;

(e) upon request, assist in organizing local advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local advisory committees; ~~and~~

(g) promote ideas and activities for groups and individuals to consider that may reduce vulnerability to drought or flooding and improve seasonal forecasting of water supply*; and*

*(h) coordinate oversight of the statewide stream gauge network identified by the department of natural resources and conservation, including:*

*(i) an early notification process for the discontinuation of any network gauge;*

*(ii) an annual review of the funding status and potential alterations to the network; and*

*(iii) an annual report to the water policy interim committee, in accordance with 5-11-210, on the drought and water supply advisory committee's network oversight activities.*

(4) The drought and water supply advisory committee shall meet, at a minimum, on or around October 15 and March 15 of each year to assess moisture conditions and forecasts and, as appropriate, begin preparations for drought or flood mitigation.

(5) By April 15 of each year, the drought and water supply advisory committee shall submit a report to the governor's office that, to the extent possible, describes the potential for drought or flooding in the coming year, describes the current water supply conditions of the state, taking into consideration winter precipitation, and provides an assessment of the cumulative water supply status.

(6) By July 1 of each year, the drought and water supply advisory committee shall submit a report to the governor's office evaluating the potential for drought for the remainder of the calendar year. If the report identifies a potential for drought that is likely to cause adverse impacts to human health and safety, environmental quality, or both, the committee shall notify the division of disaster and emergency services and county commissioners, tribal governments, conservation districts, and local watershed groups in the geographic location potentially impacted by drought and the types of impacts likely to occur.

(7) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought and water supply advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought or flood planning, preparation, coordination, and mitigation."

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

Approved April 24, 2023

# CHAPTER NO. 224

[SB 22]

AN ACT GENERALLY REVISING INDEPENDENT CONTRACTOR LAWS; PROVIDING DEPARTMENT ANALYSIS RELATING TO THE EMPLOYMENT STATUS OF A PERSON; REVISING LAWS RELATED TO INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES; REQUIRING DEPARTMENT ANALYSIS IN CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 39-71-419, MCA.

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

**Section 1.** Section 39-71-417, MCA, is amended to read:

"**39-71-417. Independent contractor certification.** (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

*(d) A person without an independent contractor exemption certificate is rebuttably presumed to be an independent contractor when:*

*(i) the person represents to a hiring entity or individual in writing that the person has an independent contractor exemption certificate;*

*(ii) the person provides the hiring entity or individual a forged or otherwise fraudulent independent contractor exemption certificate; or*

*(iii) the person's independent contractor exemption certificate expires while the person is working under the contract and prior to full performance of the contract, for a period not to exceed 120 days following the expiration of the certificate.*

*(e) The department shall utilize the considerations set forth in subsections (4)(a)(i) and (4)(a)(ii) for any evaluation conducted under subsection (7)(d).*

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

Approved April 24, 2023

# CHAPTER NO. 225

[SB 24]

AN ACT REQUIRING ELECTRONIC CORPORATE INCOME TAX RETURNS; PROVIDING EXCEPTIONS TO ELECTRONIC FILING; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Electronic corporate income tax return required -- waiver -- rulemaking.** (1) Subject to subsection (3), for income tax periods

beginning after December 31, 2022, a corporation shall transmit to the department, in an electronic format approved by the department, the corporate income tax return required by 15-31-111, along with the corresponding federal income tax return filed with the internal revenue service and all other related forms and schedules required to be attached.

(2) Except as provided in subsections (3) through (5), for income tax periods beginning after December 31, 2023, if a corporation fails to file a corporate income tax return electronically in the manner required in subsection (1), the corporation is subject to a late filing penalty pursuant to 15-1-216(1).

(3) (a) For income tax periods beginning between January 1, 2023, and December 31, 2024, a corporation is not required to file a corporate income tax return electronically if it attests, on a form provided by the department, that the corporation attempted to file electronically but was unsuccessful in doing so or that hardship would result by filing electronically.

(b) The For income tax periods beginning after December 31, 2024, the department may waive the electronic filing if the corporation demonstrates that software that satisfies the conditions of this section is not readily available or that a hardship will result if it is required to file electronically. A corporation requesting a waiver shall file a written request at least 30 days prior to the date the electronic filing is due, including extensions for filing the return.

(4) (a) A corporation that has gross receipts of $750,000 or less in a tax period is exempt from the electronic filing requirements described in this section for that taxable period.

(b) For the purposes of this section, "gross receipts" means the total gross revenue of the corporation for the tax period from all sources, without any subtraction for costs or expenses.

(5) If the return required to be filed electronically is transmitted on or before the due date, including extensions, and the return is rejected, the department shall allow the filer 10 calendar days from the date of the first transmission to perfect the return for electronic resubmission.

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

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, 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 tax periods beginning after December 31, 2022.

Approved April 24, 2023

# CHAPTER NO. 226

[SB 49]

AN ACT GENERALLY REVISING CABIN SITE SALES; REVISING THE CANCELLATION OF SALE REQUIREMENTS; AMENDING SECTION 77-2-363, 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 77-2-363, MCA, is amended to read:

"**77-2-363. Land banking land sales and limitations -- sale preparation costs.** (1) (a) The board may not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage

cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank or an electronic funds transfer, as defined in 32-6-103, equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price. Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the department.

(b) ~~If~~ *Except as provided in subsection (2)(c), if* the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

*(c) If the land to be sold is a leased cabin or home site as provided in 77-2-318 and the current lessee has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction unless another person has deposited a bid bond per subsection (2)(a), at which point the sale cannot be canceled by the lessee. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.*

~~(c)~~*(d)* The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board, the department, or the cabin or home site lessee, the lessee of the land must be afforded all the rights and privileges to match the high bid as provided in 77-2-324.

(5) (a) Except as provided in subsection (6), when the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and the actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

(6) For the sale of a cabin or home site, the department shall prepare and assume the cost of the land survey. The department may allow the survey to be paid for in advance by the lessee or the owner of any improvements if the survey is contracted through the department according to department specifications. If the parcel is sold but the purchaser is other than the lessee or the owner of the improvements, the cost of the survey must be included in the actual costs at closing and the department shall refund the cost of the survey to the former lessee or the owner of the improvements.

(7) The sale of a cabin or home site is exempt from the provisions of Title 75, chapter 1, parts 1 through 3."

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

**Section 3. Applicability.** [This act] applies to proposed sales of cabin or home sites initiated on or after [the effective date of this act].

Approved April 24, 2023

# CHAPTER NO. 227

[SB 50]

AN ACT REQUIRING STATE AGENCIES AND THIRD PARTIES TO REPORT SECURITY INCIDENTS; DEFINING CHIEF INFORMATION SECURITY OFFICER AND SECURITY INCIDENT; AND AMENDING SECTIONS 2-6-1501, 2-6-1502, AND 2-6-1503, MCA.

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

**Section 1. Immediate notification.** On discovery or notification of a security incident, a state agency shall provide immediate notification without unreasonable delay to the chief information security officer.

**Section 2.** Section 2-6-1501, MCA, is amended to read:

"**2-6-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Breach of the security of a data system" or "breach" means the unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

*(2) "Chief information security officer" means an employee at the department of administration designated by the chief information officer who is responsible for protecting the state's information assets and citizens' data by:*

*(a) advising and overseeing information security strategy and programs for executive branch state agencies without elected officials;*

*(b) advising and consulting information security strategy and programs for executive branch state agencies with elected officials and the legislative and judicial branches; and*

*(c) advising information security strategy and programs for city, county, consolidated city-county, and local governments and for school districts, other political subdivisions, or tribal governments.*

~~(2)~~*(3)* "Individual" means a human being.

~~(3)~~*(4)* "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

~~(4)~~*(5)* (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number;

(ii) a driver's license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa;

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account;

(iv) medical record information as defined in 33-19-104;

(v) a taxpayer identification number; or

(vi) an identity protection personal identification number issued by the United States internal revenue service.

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

~~(5)~~*(6)* "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

*(7) "Security incident" means an occurrence that:*

*(a) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits; or*

*(b) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.*

~~(6)~~*(8)* (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

~~(7)~~*(9)* "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency."

**Section 3.** Section 2-6-1502, MCA, is amended to read:

"**2-6-1502. Protection of personal information -- compliance -- extensions.** (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of personal information;

(b) identify the person or state agency authorized to have access to personal information;

(c) restrict access to personal information by unauthorized persons or state agencies;

(d) identify circumstances in which redaction of personal information is appropriate;

(e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of personal information on portable devices; and

(g) protect data containing personal information if that data is on a portable device.

(3) Except as provided in subsection (4), each state agency that is created after October 1, 2015, shall complete the requirements of this section within 1 year of its creation.

(4) The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform ~~the information technology board~~ *the governor*, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension."

**Section 4.** Section 2-6-1503, MCA, is amended to read:

"**2-6-1503. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency or third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information *security* officer at the department of administration and to the attorney general's consumer protection office an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer and the consumer protection office."

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 6, part 15, and the provisions of Title 2, chapter 6, part 15, apply to [section 1].

Approved April 24, 2023

# CHAPTER NO. 228

[SB 53]

AN ACT REVISING LAWS RELATING TO WEIGHTS AND MEASURES FEES COLLECTED BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY ON FEES FOR WEIGHTS AND MEASURES; LIMITING THE FEE INCREASE ON A LICENSE FOR A WEIGHING DEVICE; ESTABLISHING REPORTING REQUIREMENTS; REQUIRING A ONE-TIME-ONLY TRANSFER OF FUNDS; AMENDING SECTIONS 30-12-202 AND 30-12-203, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 30-12-202, MCA, is amended to read:

"**30-12-202. Specific powers and duties of department -- rules.** (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, and the rules have the effect of law. These rules may include:

(a) schedules of fees for *licensing,* testing, and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of service providers and service agencies.

(2) The rules described in subsection (1) must include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments to the specifications, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements to that handbook or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect"."

**Section 2.** Section 30-12-203, MCA, is amended to read:

"**30-12-203. Licensing of weighing devices.** (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department ~~upon~~ *on* a form provided by the department. Each license must require at least one inspection a year.

~~(3) An application must be accompanied by the proper fee as established by this section, except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.~~

~~WEIGHING DEVICES~~

| ~~Capacity~~ | ~~Fees~~ |
|---|---|
| ~~499 pounds or less~~ | ~~$20~~ |
| ~~500 pounds through 1,999 pounds~~ | ~~$33~~ |
| ~~2,000 pounds through 7,999 pounds~~ | ~~$64~~ |
| ~~8,000 pounds through 60,000 pounds~~ | ~~$165~~ |
| ~~60,001 pounds or more~~ | ~~$280~~ |

*(3) (a) An application must be accompanied by the proper fee, as established by this section and subject to subsection (3)(b), except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.*

*WEIGHING DEVICES*

| *Capacity* | *Fees* |
|---|---|
| *499 pounds or less* | *$20* |
| *500 pounds through 1,999 pounds* | *$33* |
| *2,000 pounds through 7,999 pounds* | *$64* |
| *8,000 pounds through 60,000 pounds* | *$165* |
| *60,001 pounds or more* | *$280* |

*(b) The department may increase fees in subsection (3)(a) every 2 years by rule, provided the fees are commensurate with the cost of issuing a license and the fee increase does not exceed 15%.*

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due; or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.

*(8) The department shall report biennially to the economic affairs interim committee in accordance with 5-11-210 concerning license fees and cost increases under this section.*"

**Section 3. Transfer of funds.** Before June 30, 2023, the department shall transfer not more than $2.3 million from fees collected pursuant to 50-60-104 into the fund designated in 30-12-203(7).

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2024.

(2) [Section 3] and this section are effective on passage and approval.

Approved April 24, 2023

# CHAPTER NO. 229

[SB 56]

AN ACT AN ACT REVISING CERTAIN BALLOT INITIATIVE PETITION FORMS FOR CONSISTENCY WITH DISTRIBUTION REQUIREMENTS SET BY THE MONTANA CONSTITUTION; AMENDING SECTIONS 13-27-204 AND 13-27-207, 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 13-27-204, MCA, is amended to read:

"**13-27-204. Petition for initiative.** (1) The following, including the language provided for in subsection (2)(b), is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.____ ON THE ELECTION BALLOT

(a) If 5% of the voters in each of ~~one-half of the counties~~ *one-third of the legislative representative districts (totaling 34 legislative representative districts)* sign this petition and the total number of voters signing this petition is _____, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the _____, 20__, general election ballot:

(Title of initiative written pursuant to 13-27-312)

(Statement of purpose and implication written pursuant to 13-27-312)

(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A

signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

(e)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(f) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) (a) If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana pursuant to 13-27-312(9), the statement in subsection (2)(b) must appear on the front page of the petition form before the information set forth in subsection (1).

(b)

WARNING

The Attorney General of Montana has determined the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

(3) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

**Section 2.** Section 13-27-207, MCA, is amended to read:

"**13-27-207. Petition for initiative for constitutional amendment.** (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of ~~one-half of the counties~~ *two-fifths of the legislative representative districts (totaling 40 legislative representative districts)* sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 20__, general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312)

(Statement of purpose and implication written pursuant to 13-27-312)

(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

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

**Section 4. Applicability.** [This act] applies to petitions that are approved as to form as provided in 13-27-202 on or after [the effective date of this act].

Approved April 24, 2023

# CHAPTER NO. 230

[SB 58]

AN ACT INCREASING THE MAXIMUM ANNUAL BLOCK MANAGEMENT PROGRAM ALLOWABLE PAYMENT TO LANDOWNERS; AMENDING SECTION 87-1-265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 87-1-265, MCA, is amended to read:

"**87-1-265. Hunting access programs -- block management program -- private landowner assistance -- rules -- restriction on landowner liability.** (1) There is established a block management program administered by the department to provide landowner assistance that encourages public access to private and public lands for hunting purposes.

(2) The department may also develop and administer alternative programs to the block management program that are designed to promote public access to private and public lands for hunting purposes.

(3) Participation in a hunting access program established under this section is voluntary. A lease, acquisition, or other arrangement for public access to or across private property for hunting purposes must be negotiated through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the conditions for use of the private property, including but not limited to:

(a) hunting access management;

(b) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) Private land is not eligible for inclusion in a hunting access program if outfitting, commercial hunting, or fees charged for private hunting access unreasonably restrict public hunting opportunities.

(5) If the department determines that an agreement may adversely influence game management decisions or wildlife habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in development of the agreement.

(6) The commission may adopt rules to implement the provisions of this section, including but not limited to rules that determine tangible benefits to be provided to a landowner who participates in a hunting access program. Benefits are intended to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

(b) wildlife habitat provided;

(c) resident game populations;

(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(7) (a) Benefits earned by a landowner who participates in a hunting access program may include but are not limited to those applied in the manner described in subsections (7)(b) and (7)(c).

(b) A landowner may receive direct payments:

(i) for weed control or may direct payments to be made directly to the county weed control board;

(ii) for fire protection or may direct fire protection payments to be made to the local fire district or the county where the landowner resides; and

(iii) to offset insurance costs incurred for allowing public hunting access.

(c) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(8) (a) Except as provided in 87-1-264 and subsection (8)(b) of this section, payments to a landowner who participates in a hunting access program through an annual agreement may not exceed ~~$25,000~~ *$50,000* ~~per~~ *a* year.

(b) Each landowner who participates in a unified cooperative agreement pursuant to subsection (3) may be eligible for payments not to exceed ~~$25,000~~ *$50,000* ~~per~~ *a* year.

(9) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in a hunting access program."

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

Approved April 24, 2023

# CHAPTER NO. 231

[SB 66]

AN ACT GENERALLY REVISING LAWS RELATED TO MONTANA NATIONAL GUARD BENEFITS AND RIGHTS; ADDING CONTRACT TERMINATION PROTECTIONS FOR SERVICE MEMBERS ON ACTIVE DUTY; REVISING DEFINITIONS; CLARIFYING NEEDS-BASED GRANTS FOR SERVICE MEMBERS AND THEIR FAMILY MEMBERS; AND AMENDING SECTIONS 10-1-902, 10-1-1302, 10-1-1304, AND 10-1-1305, MCA.

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

**Section 1. Termination of residential leases and telephone, internet access, and multichannel video programming service contracts.** (1) A service member on active duty may terminate any residential lease when ordered to a permanent duty station that is more than 60 miles away from the member's current residence.

(2) A service member on active duty who is ordered to a new permanent duty station may terminate a service contract if the service contract:

(a) was entered into before the service member was ordered to the new permanent duty station; and

(b) is not available from the service provider at the same quality or at the same cost at the service member's new permanent duty station.

(3) A service member who terminates a residential lease or a service contract under this section is not liable for early termination fees or other damages arising from early termination.

(4) (a) Termination of a residential lease or a service contract under this section must be made by delivering written notice of termination and a copy of the service member's military orders to the residential lessor or consumer services provider.

(b) Notice may be made by hand delivery, United States mail, or electronic means.

(c) Termination of the residential lease or service contract is not effective until 45 days after delivery of the notice.

(5) As used in this section, "service contract" means a contract for cellular phone service, telephone exchange service, internet access service, or multichannel video programming service.

**Section 2.** Section 10-1-902, MCA, is amended to read:

"**10-1-902. Definitions.** As used in this part, the following definitions apply:

(1) "Active duty" means at least 14 consecutive days of full-time state military duty, as defined in 10-1-1003, or 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) "Permanent duty station" means a service member's official permanent workplace as depicted in the member's written military order.*

~~(4)~~*(5)* "Service member" means any member of the Montana army or air national guard serving on active duty."

**Section 3.** Section 10-1-1302, MCA, is amended to read:

"**10-1-1302. Montana military family relief fund -- purpose -- administration.** (1) There is a Montana military family relief fund.

(2) The purpose of the fund is to aid members ~~of the Montana national guard or reserve component who have been activated for federal service in a contingency operation and the families of members~~ *and their family members through the hardships of military service.*

(3) The department shall administer the fund as provided in this part."

**Section 4.** Section 10-1-1304, MCA, is amended to read:

"**10-1-1304. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means the Montana military family relief fund account established in 10-1-1303.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "Family member" means a person who has been approved as a dependent of a member and is enrolled as a dependent of the member in the defense enrollment eligibility reporting system of the United States department of defense.

(4) "Fund" means the Montana military family relief fund established in 10-1-1302.

(5) ~~"Member" means a Montana resident who is a member of the Montana national guard or reserve component, as defined in 38 U.S.C. 101, and who on or after July 1, 2007, is on active duty for federal service in a contingency operation~~ *"Member" means:*

*(a) a member of the Montana army national guard;*

*(b) a member of the Montana air national guard; or*

*(c) a Montana resident who is a member of the reserve component, as defined in 38 U.S.C. 101, and who, beginning July 1, 2007, or after, is on active duty for federal service in a contingency operation.*"

**Section 5.** Section 10-1-1305, MCA, is amended to read:

"**10-1-1305. Allowable uses of account.** Subject to the availability of money in the account and 10-1-1306, the department shall use the money in the account to make the following grants to members and to family members:

(1) a status-based grant of $250 to each family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days;

(2) a needs-based grant of not more than $2,000 to a member or ~~to~~ a family member ~~of a member who is activated for federal service in a contingency operation for a period of more than 30 days and:~~ *if the member or family member is experiencing a significant emergency that, in the discretion of the department, warrants financial assistance; and*

~~(a) the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or salary; or~~

~~(b) the member or a family member is experiencing a significant emergency that warrants financial assistance; and~~

(3) a casualty-based grant of $2,000 to a member who at any time after activation for federal service in a contingency operation sustained a nonfatal injury in the course of or related to combat as a direct result of hostile action. A member may receive only one casualty-based grant for injuries sustained during or arising out of the same contingency operation."

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, part 9, and the provisions of Title 10, chapter 1, part 9, apply to [section 1].

Approved April 24, 2023

# CHAPTER NO. 232

[SB 70]

AN ACT REVISING THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM; REMOVING THE REQUIREMENTS FOR A QUALIFYING EDUCATOR TO BE TEACHING IN A CRITICAL QUALITY EDUCATOR SHORTAGE AREA; REVISING REPORTING REQUIREMENTS; AMENDING SECTIONS 20-4-502, 20-4-503, AND 20-4-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-4-502, MCA, is amended to read:

"**20-4-502. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Critical quality educator shortage area" means a specific licensure or endorsement area in an impacted school in which:~~

~~(a) in any of the 3 immediate preceding school fiscal years a position was:~~

~~(i) filled through the procedures set forth in 19-20-732, 20-4-106(1)(e), or 20-4-111;~~

~~(ii) filled from a candidate pool of less than five qualified candidates; or~~

~~(iii) advertised and remained vacant and unfilled due to a lack of qualified candidates for a period in excess of 30 days; or~~

~~(b) a vacancy for the current school year was advertised for a period of at least 30 days and the district received less than five applications from qualified candidates.~~

~~(2)~~*(1)* "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

~~(3)~~*(2)* "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

~~(4)~~*(3)* "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

~~(5)~~*(4)* "Impacted school" means:

(a) a special education cooperative;

(b) the Montana school for the deaf and blind, as described in 20-8-101;

(c) the Montana youth challenge program, as established in 10-1-1401;

(d) a correctional facility, as defined in 41-5-103;

(e) a public school located on an Indian reservation; and

(f) a public school that, driving at a reasonable speed for the road surface, is located more than 20 minutes from a Montana city with a population greater than 15,000 based on the most recent federal decennial census.

~~(6)~~*(5)* (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the current school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection ~~(6)(b)~~ *(5)(b)* in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection ~~(6)(b) of this section~~ *(5)(b)* to provide services to students.

(b) For purposes of subsection ~~(6)(a)~~ *(5)(a)*, an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a correctional facility, as defined in 41-5-103.

~~(7)~~*(6)* "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

**Section 2.** Section 20-4-503, MCA, is amended to read:

"**20-4-503. (Temporary) Critical quality educator ~~shortage areas~~ *shortages* -- impacted schools.** (1) The board of public education, in consultation with the office of public instruction, shall~~:~~

~~(a)~~ maintain and make publicly available a current list of impacted schools~~; and~~

~~(b) based on reporting by impacted schools or school districts in which impacted schools are located, identify within each impacted school, critical quality educator shortage areas under 20-4-502(1)(a). The board of public education shall also establish a process for impacted schools to report and qualify, no later than 5 days after submission of a written report on a form developed by the board, a current vacancy for a critical quality educator shortage area under the criteria set forth in 20-4-502(1)(b). Critical quality educator shortage areas qualifying under 20-4-502(1)(b) are eligible for loan repayment assistance independent of the report under subsection (2) of this section~~.

~~(2) The board of public education shall publish by February 1 an annual report listing the critical quality educator shortage areas under 20-4-502(1)(a) in each impacted school. The report must apply to the school year that begins July 1 following the publication of the report in order to assist recruitment by impacted schools.~~

~~(3)~~*(2)* A quality educator working at an impacted school ~~in a critical quality educator shortage area~~ is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part. If a quality educator is eligible for loan assistance and remains employed in the same impacted school or another impacted school within the same school district ~~and in the same critical quality educator shortage area for which the quality educator was originally eligible~~, the quality educator remains eligible for *a lifetime total of* up to 3 years of state-funded loan repayment assistance and an additional 1 year of loan repayment assistance funded by the impacted school or the district under which the impacted school is operated pursuant to 20-4-504(2). Both state-funded loan repayment assistance and locally funded loan repayment assistance under this section are exempt from taxation as specified in 15-30-2110(14).

**20-4-503. (Effective January 1, 2024) Critical quality educator ~~shortage areas~~ *shortages* -- impacted schools.** (1) The board of public education, in consultation with the office of public instruction, shall~~:~~

~~(a)~~ maintain and make publicly available a current list of impacted schools~~; and~~

~~(b) based on reporting by impacted schools or school districts in which impacted schools are located, identify within each impacted school, critical quality educator shortage areas under 20-4-502(1)(a). The board of public education shall also establish a process for impacted schools to report and qualify, no later than 5 days after submission of a written report on a form developed by the board, a current vacancy for a critical quality educator shortage area under the criteria set forth in 20-4-502(1)(b). Critical quality~~

~~educator shortage areas qualifying under 20-4-502(1)(b) are eligible for loan repayment assistance independent of the report under subsection (2) of this section~~.

~~(2) The board of public education shall publish by February 1 an annual report listing the critical quality educator shortage areas under 20-4-502(1)(a) in each impacted school. The report must apply to the school year that begins July 1 following the publication of the report in order to assist recruitment by impacted schools.~~

~~(3)~~*(2)* A quality educator working at an impacted school ~~in a critical quality educator shortage area~~ is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part. If a quality educator is eligible for loan assistance and remains employed in the same impacted school or another impacted school within the same school district ~~and in the same critical quality educator shortage area for which the quality educator was originally eligible~~, the quality educator remains eligible for *a lifetime total of* up to 3 years of state-funded loan repayment assistance and an additional 1 year of loan repayment assistance funded by the impacted school or the district under which the impacted school is operated pursuant to 20-4-504(2)."

**Section 3.** Section 20-4-504, MCA, is amended to read:

"**20-4-504. Loan repayment assistance.** (1) Loan repayment assistance may be provided on behalf of a quality educator who:

(a) is newly hired in an impacted school ~~in a critical quality educator shortage area~~; and

(b) has an educational loan that is not in default and that has a minimum unpaid current balance of at least $1,000 at the time of application.

(2) A quality educator is eligible for state-funded loan repayment assistance for *a lifetime total of* no more than 3 years and an additional 1 year of loan repayment assistance voluntarily funded by the impacted school or the district under which the impacted school is operated, with the maximum annual loan repayment assistance not to exceed:

(a) $3,000 of state-funded loan repayment assistance after the first complete year of teaching in an impacted school;

(b) $4,000 of state-funded loan repayment assistance after the second complete year of teaching in the same impacted school or another impacted school within the same school district;

(c) $5,000 of state-funded loan repayment assistance after the third complete year of teaching in the same impacted school or another impacted school within the same school district; and

(d) up to $5,000 of loan repayment assistance funded by the impacted school or the district under which the impacted school is operated after the fourth complete year of teaching in the same impacted school or another impacted school within the same school district.

(3) If the funding for state-funded loan repayment assistance in any year is less than the total amount for which Montana quality educators qualify, the superintendent of public instruction shall ~~prorate repayment assistance amounts accordingly~~ *prorate repayment assistance amounts accordingly*."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2023

# CHAPTER NO. 233

[SB 77]

AN ACT GENERALLY REVISING LAWS RELATED TO REDISTRICTING DATA FOR INMATES; REQUIRING THE DEPARTMENT OF CORRECTIONS TO COLLECT CERTAIN ADDRESS AND DEMOGRAPHIC INFORMATION FROM INCARCERATED INDIVIDUALS; REQUIRING THE STATE CENSUS AND ECONOMIC INFORMATION CENTER TO REVISE FEDERAL DECENNIAL CENSUS POPULATION DATA TO REALLOCATE INCARCERATED INDIVIDUALS; REQUIRING LOCAL GOVERNMENTS TO USE THE ADJUSTED DATA TO REVISE ELECTION BOUNDARIES THAT ARE BASED ON POPULATION; AMENDING SECTION 90-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Center" means the state census and economic information center established in 90-1-109.

(2) "Department" means the department of corrections established in 2-15-2301.

(3) "Federal correctional facility" means a prison or correctional facility owned by or contracting with the United States government to incarcerate individuals convicted of a criminal offense.

(4) "Last known address" means an individual's last known complete street or physical address prior to the individual's incarceration. An individual's last known address is presumed to be outside of the state prison or federal correctional facility in which the individual is held.

(5) "Local government district" means a district based on population that is maintained by a local government primarily for election purposes and that must be substantially equal in population under the 14th amendment to the United States constitution.

(6) "State prison" means a facility listed in 53-30-101(1), (2), or (4).

**Section 2. Electronic record.** (1) Within 6 months of [the effective date of this act], the department shall collect and maintain an electronic record of the last known address and other demographic data for an individual entering the department's custody. The record must include but is not limited to:

(a) the individual's last known address;

(b) the individual's race, whether the person is an American Indian or an Alaska Native, and whether the person is of Hispanic or Latino origin; and

(c) if the individual is 18 years of age or older.

(2) To the extent possible, the department shall collect and maintain the information required in subsection (1) for individuals in state prisons who entered the department's custody prior to [the effective date of this act].

**Section 3. Report to state census and economic information center.** (1) By May 1 of each year in which the federal decennial census is taken and in which the United States census bureau allocates incarcerated individuals as residents of a state prison, the department shall deliver to the center:

(a) a unique identifier not including the name or offender identification number for each incarcerated individual subject to the jurisdiction of the department on the date for which the decennial census reports population numbers;

(b) the street address of the prison in which the individual was incarcerated at the time of the census;

(c) the last known address of the individual prior to incarceration;

(d) the individual's race, whether the individual is an American Indian or an Alaska Native, whether the individual is of Hispanic or Latino origin, and if the person is 18 years of age or older; and

(e) other information the center may request.

(2) The department shall provide the information in subsection (1) in a format specified by the center.

(3) The information provided as required in subsection (1) is private. It may not:

(a) include the incarcerated individual's name or other information that may allow the individual to be identified except by the department; or

(b) be disclosed by the department or the center except as redistricting data aggregated by census block for the purposes described in [section 5].

**Section 4. Federal facilities.** The center shall request from each federal correctional facility located in Montana a report that includes the information listed in [section 3(1)].

**Section 5. Redistricting population data.** (1) The center shall prepare redistricting population data that reflects an incarcerated individual at the individual's last known address pursuant to [section 6].

(2) The districting and apportionment commission shall use the data to form congressional, state house, or state senate districts.

(3) A local government shall use the data to form local government districts that are based on population. An incarcerated individual whose address prior to incarceration is unknown, as determined pursuant to [section 6], may not be included in the calculation used to determine the ideal population of a local government district.

**Section 6. Adjustment and publication of population data -- notification to local governments -- limitation on use for distribution of aid.** (1) For each individual included in a report received under [section 3 or 4], the center shall determine the geographic units for which population counts are reported in the federal decennial census that contain the state prison or federal correctional facility in which the individual is or was incarcerated and the individual's last known address as listed in the report provided pursuant to [section 3 or 4].

(2) If the individual's last known address is in Montana, the center shall:

(a) remove the individual from any population counts for the geographic units that include the state prison unless that geographic unit also contains the individual's last known address; and

(b) ensure that any population counts reported by the center reflect the individual's last known address.

(3) If the individual's last known address is not reported or is not in Montana or if an individual reported in the federal decennial census resides in a federal correctional facility, the center shall remove the individual from any population counts for the geographic units that include the state prison or federal correctional facility at which the individual was incarcerated and allocate the individual to a state unit not tied to a specific geography as other state residents with unknown state addresses are allocated, including but not limited to military and federal government personnel stationed overseas.

(4) The center shall prepare and publish the data required under this section no later than 30 days from the date that the federal decennial data is published for Montana.

(5) The center shall notify local governments that [section 5] requires local governments to use the data prepared as required in [sections 1 through 6].

(6) The data prepared by the center may not be used to calculate population to determine the distribution of state or federal aid.

**Section 7.** Section 90-1-109, MCA, is amended to read:

"**90-1-109. State census and economic information center.** The department of commerce shall, in cooperation with other state, federal, and local agencies, establish and maintain a central depository of information, including computer-retrievable files, concerning the significant characteristics of the state, its people, economy, land, and physical characteristics. The department shall*:*

*(1)* analyze and disseminate ~~such~~ *this* information to state, federal, and local agencies and to the general public*; and*

*(2) perform the duties assigned to the state census and economic information center in [sections 1 through 6].*"

**Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections 1 through 6].

**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 July 1, 2023.

**Section 11. Applicability.** [This act] applies to local election districts based on population whose boundaries are created or altered on or after the date when the redistricting data for the 2030 census is available.

Approved April 24, 2023

# CHAPTER NO. 234

[SB 81]

AN ACT REVISING THE DESCRIPTION OF CENTRALLY ASSESSED PIPELINE PROPERTIES; AMENDING SECTIONS 15-6-138, 15-6-141, 15-23-101, AND 15-23-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 15-6-138, 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 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, 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, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) 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 15-6-220, 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 or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(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, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101~~, a pipeline carrier as defined in 49 U.S.C. 15102(2),~~ or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402, class eight property is taxed at:

(a) for the first $6 million of taxable market value in excess of the exemption amount in subsection (4), 1.5%; and

(b) for all taxable market value in excess of $6 million, 3%.

(4) The first [$300,000] of market value of class eight property of a person or business entity is exempt from taxation.

(5) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold. (Bracketed language is temporarily amended to "$100,000" on occurrence of contingency for calendar years 2022, 2023, 2024, and 2025 until July 1, 2025--secs. 12(7) and 14, Ch. 506, L. 2021--see compiler's comment.)

**15-6-138. (Effective July 1, 2025) Class eight property -- description -- taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, 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, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) 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 15-6-220, 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 or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(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, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101~~, a pipeline carrier as defined in 49 U.S.C. 15102(2),~~ or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402, class eight property is taxed at:

(a) for the first $6 million of taxable market value in excess of the exemption amount in subsection (4), 1.5%; and

(b) for all taxable market value in excess of $6 million, 3%.

(4) The first $300,000 of market value of class eight property of a person or business entity is exempt from taxation.

(5) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this

subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**Section 2.** Section 15-6-141, MCA, is amended to read:

"**15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both;

(b) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(c) rural electric cooperatives' property, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157 and property used for headquarters, office, shop, or other similar facilities, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative;

(d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, ~~a pipeline carrier as defined in 49 U.S.C. 15102(2),~~ or the gas gathering facilities specified in 15-6-138(5); and

(e) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145;

(viii) telecommunications property included in 15-6-156; and

(ix) all property classified under 15-6-163.

(2) Class nine property is taxed at 12% of market value."

**Section 3.** Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

(c) common carrier pipelines as defined in 69-13-101 ~~or a pipeline carrier as defined in 49 U.S.C. 15102(2)~~;

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138(5);

(f) the dedicated communications infrastructure specified in 15-6-162(5);

(g) canals, ditches, flumes, or like properties; and

(h) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

**Section 4.** Section 15-23-301, MCA, is amended to read:

"**15-23-301. Officers of certain public utility companies to furnish statement to department.** The president, secretary, or managing agent of a corporation or any other officer that the department may designate and each person or association of persons owning or operating a telegraph, telephone, microwave, or electric power or transmission line, a natural gas distribution utility, a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, ~~a pipeline carrier as defined in 49 U.S.C. 15102(2),~~ or any canal, ditch, flume, or other property, other than real estate not included in a right-of-way, that constitutes a single and continuous property throughout more than one county or state, shall each year furnish the department with a statement, signed and sworn to by one of the officers or by the person or one of the persons forming the association, showing in detail for the year ending on December 31 immediately preceding:

(1) the whole number of miles of property in the state and, if the property is partly out of the state, the whole number of miles outside of the state and the whole number of miles within the state owned or operated by the corporation, person, or association;

(2) the total value of the entire property and plant, both within and outside of the state, and the total value of that portion of the property and plant within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) other information regarding the property as may be required by the department."

**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 property tax years beginning after December 31, 2022.

Approved April 24, 2023

# CHAPTER NO. 235

[SB 86]

AN ACT LIMITING THE NUMBER OF REGISTERED VOTERS IN EACH ELECTION PRECINCT; AND AMENDING SECTION 13-3-101, MCA.

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

**Section 1.** Section 13-3-101, MCA, is amended to read:

"**13-3-101. Establishment of election precincts.** (1) The territorial unit for elections is the election precinct. All election precincts ~~shall~~ *must* be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible. *A precinct may not contain more than 2,500 registered voters. This subsection may only be applied at the time a county governing body revises precinct boundaries pursuant to 13-3-102, and except as provided in subsection (3), it may not be otherwise construed to require a county governing body to revise the boundaries of precincts more frequently due to fluctuations of registered voters within the precinct between districting and apportionment plans adopted under Article V, section 14, of the Montana constitution.*

*(3) If fluctuations in the number of registered voters result in a precinct with 3,750 or more registered voters, the governing body shall adjust the precinct boundaries to contain 2,500 or fewer registered voters. If the governing body is required to make an adjustment to a precinct boundary pursuant to this subsection, the governing body is not required to make the adjustment during a year in which a federal election is scheduled but shall make the adjustment in the next year during which there is not a regularly scheduled federal election.*"

Approved April 24, 2023

# CHAPTER NO. 236

[SB 100]

AN ACT GENERALLY REVISING LAWS RELATING TO NATUROPATHIC PHYSICIANS AND NATURAL SUBSTANCES; REVISING DEFINITIONS; AMENDING THE NATURAL SUBSTANCE FORMULARY LIST FOR NATUROPATHIC PHYSICIANS; AMENDING LAWS RELATING TO THE NATURAL SUBSTANCE FORMULARY LIST; AMENDING SECTIONS 37-26-103, 37-26-201, AND 37-26-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-26-103, MCA, is amended to read:

"**37-26-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules,

which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1730.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) (a) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of ~~natural~~ therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules.

(b) The term does not include a forceps delivery, general or spinal anesthesia, or a cesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of ~~natural~~ therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials."

**Section 2.** 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 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;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(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; and

(8) adopt rules that contain the ~~natural substance~~ formulary list created by the alternative health care formulary committee provided for in 37-26-301."

**Section 3.** Section 37-26-301, MCA, is amended to read:

"**37-26-301. Practice of naturopathic health care -- alternative health care formulary committee.** (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(m), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the ~~natural~~ therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following ~~natural~~ therapeutic substances, drugs, and therapies, as well as drugs *as specified by* ~~on~~ the ~~natural substance~~ formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a ~~natural substance~~ formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available

within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2023

# CHAPTER NO. 237

[SB 101]

AN ACT REVISING LAWS RELATING TO THE DISPENSATION OF DRUGS BY NATUROPATHIC PHYSICIANS; INCLUDING NATUROPATHIC PHYSICIANS IN LAWS RELATING TO THE DISPENSATION OF DRUGS; AMENDING SECTIONS 37-2-104 AND 37-26-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-2-104, MCA, is amended to read:

"**37-2-104. Dispensing of drugs by medical practitioners -- registration -- exceptions.** (1) Subject to subsection (7), a medical practitioner may dispense drugs if the practitioner:

(a) registers with the board of pharmacy provided for in 2-15-1733; and

(b) complies with the requirements of this section.

(2) Drugs dispensed by a medical practitioner must be:

(a) dispensed directly by the practitioner at the practitioner's office or place of practice;

(b) dispensed only to the practitioner's own patients; and

(c) necessary in the treatment of the condition for which the practitioner is attending the patient.

(3) Before dispensing a drug, a medical practitioner shall offer to give a patient the prescription in a written, electronic, or facsimile form that the patient may choose to have filled by the practitioner or any pharmacy.

(4) Except as otherwise provided in this section, a medical practitioner:

(a) may dispense only those drugs that the practitioner is allowed to prescribe under the practitioner's scope of practice; and

(b) may not dispense a controlled substance.

(5) A medical practitioner dispensing drugs shall comply with and is subject to the provisions of this part and the provisions of:

(a) Title 37, chapter 7, parts 4, 5, and 15;

(b) Title 50, chapter 31, parts 3 and 5;

(c) the labeling, storage, inspection, and recordkeeping requirements established by the board of pharmacy; and

(d) all applicable federal laws and regulations.

(6) A medical practitioner registering with the board of pharmacy shall pay a fee established by the board by rule. The fee must be paid at the time of registration and on each renewal of the practitioner's license.

(7) Except as provided in subsection (8), a medical practitioner registered with the board of pharmacy may not dispense drugs to an injured worker being treated pursuant to Title 39, chapter 71.

(8) This section does not prohibit any of the following when a medical practitioner has not registered to dispense drugs or when a practitioner registered to dispense drugs is treating an injured worker pursuant to Title 39, chapter 71:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (8)(h) must meet the labeling, storage, and recordkeeping requirements of the board of pharmacy.

(i) a medical practitioner from dispensing an opioid antagonist as provided in 50-32-605.

*(9) For the purposes of this section, the term "medical practitioner" includes a naturopathic physician.*"

**Section 2.** Section 37-26-301, MCA, is amended to read:

"**37-26-301. Practice of naturopathic health care -- alternative health care formulary committee.** (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(m), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe*,* ~~and~~ administer*, and dispense* for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, as well as drugs on the natural substance formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) ~~Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2).~~ If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

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

Approved April 24, 2023

# CHAPTER NO. 238

[SB 159]

AN ACT REMOVING THE AUTHORITY TO EXERCISE EMINENT DOMAIN BY COUNTIES FOR PUBLIC RECREATIONAL OR CULTURAL PURPOSES AND BY THE LAND BOARD TO DESIGNATE NATURAL AREAS; PROHIBITING THE USE OF EMINENT DOMAIN FOR USES WHOSE PRIMARY PURPOSE IS A TRAIL, A PATH, OR A CONNECTING TRAIL OR PATH; AMENDING SECTIONS 7-16-2105, 70-30-102, AND 76-12-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Eminent domain not to be used for certain recreational purposes.** The right of eminent domain may not be exercised for:

(1) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses whose primary purpose is a foot path, equestrian trail, bicycle path, or walkway; or

(2) a public park whose primary purpose is:

(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use.

**Section 2.** Section 7-16-2105, MCA, is amended to read:

"**7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** A county may acquire, by purchase, grant, deed, gift, *or* devise, ~~condemnation pursuant to Title 70, chapter 30, or otherwise,~~ lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway."

**Section 3.** Section 70-30-102, MCA, is amended to read:

"**70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

~~(14) county recreational and cultural purposes as provided in 7-16-2105;~~

~~(15)~~*(14)* city or town athletic fields and civic stadiums as provided in 7-16-4106;

~~(16)~~*(15)* county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

~~(17)~~*(16)* preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

~~(18)~~*(17)* public assistance purposes as provided in 53-2-201;

~~(19)~~*(18)* highway purposes as provided in 60-4-103 and 60-4-104;

~~(20)~~*(19)* common carrier pipelines as provided in 69-13-104;

~~(21)~~*(20)* water supply, water transportation, and water treatment systems as provided in 75-6-313;

~~(22)~~*(21)* mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

~~(23)~~*(22)* the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

~~(24)~~*(23)* screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

~~(25)~~*(24)* water conservation and flood control projects as provided in 76-5-1108;

~~(26) acquisition of natural areas as provided in 76-12-108;~~

~~(27)~~*(25)* acquisition of water rights for the natural flow of water as provided in 85-1-204;

~~(28)~~*(26)* property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

~~(29)~~*(27)* conservancy district purposes as provided in 85-9-410;

~~(30)~~*(28)* wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

~~(31)~~*(29)* canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

~~(32)~~*(30)* sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(33)~~*(31)* roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

~~(34)~~*(32)* outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

~~(35)~~*(33)* an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(36)~~*(34)* private roads leading from highways to residences or farms;

~~(37)~~*(35)* telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;

~~(38)~~*(36)* telegraph lines;

~~(39)~~*(37)* sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

~~(40)~~*(38)* tramway lines;

~~(41)~~*(39)* logging railways;

~~(42)~~*(40)* temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

~~(43)~~*(41)* underground reservoirs suitable for storage of natural gas;

~~(44)~~*(42)* projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

~~(45)~~*(43)* projects to restore and reclaim lands that were strip-mined or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

**Section 4.** Section 76-12-108, MCA, is amended to read:

"**76-12-108. Acquisition of lands.** Subject to the limits of available appropriations, the board is authorized to acquire interests in land by ~~any lawful means~~ *purchase, grant, deed, gift, or devise* for the purpose of designating natural areas. ~~The board may exercise the power of eminent domain, provided for in Title 70, chapter 30, only in specific instances authorized by the legislature.~~"

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Applicability.** [This act] does not apply to condemnation proceedings commenced pursuant to 70-30-206 before [the effective date of this act].

Approved April 24, 2023

# CHAPTER NO. 239

[SB 215]

AN ACT DIRECTING AN AMENDMENT TO ARM 17.36.328 TO REQUIRE A MUNICIPAL OR COUNTY WATER AND/OR SEWER DISTRICT WATER AND WASTEWATER SYSTEM TO ACCEPT A CONNECTION FROM A PROPOSED SUBDIVISION UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Department to amend rule.** (1) The department of environmental quality shall amend ARM 17.36.328 to add a requirement that a municipal or county water and/or sewer district water and wastewater system must accept a connection request from a proposed subdivision and make public wastewater service available to the subdivision if:

(a) any boundary of the subdivision is within 1,000 feet of any component of the municipal or county water and/or sewer district water and wastewater system;

(b) any boundary of the subdivision is adjacent to a stream, lake, pond, or other body of water, or the department has determined that onsite disposal of wastewater from the subdivision does not meet the criteria in 75-5-301 for nonsignificant surface water impacts; and

(c) the municipal or county water and/or sewer district water and wastewater system has an adequate wastewater capacity to meet the needs of the subdivision.

(2) The amendments to ARM 17.36.328 required in this section are subject to subsections (2) and (3) of ARM 17.36.328.

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

Approved April 24, 2023

# CHAPTER NO. 240

[HB 36]

AN ACT REVISING SCHOOL FUNDING LAWS RELATED TO ENROLLMENT INCREASES; PROVIDING FOR SIGNIFICANT ENROLLMENT INCREASE PAYMENTS BASED ON THE OCTOBER ENROLLMENT COUNT; ELIMINATING THE CURRENT MECHANISM FOR ANTICIPATED UNUSUAL ENROLLMENT INCREASES; AMENDING SECTIONS 20-3-106, 20-9-141, 20-9-166, 20-9-308, 20-9-310, AND 20-9-313, MCA; AMENDING SECTION 11, CHAPTER 551, LAWS OF 2021; REPEALING SECTION 20-9-314, 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 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools -- powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 ~~and 20-9-314~~.

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education in accordance with the provisions of 20-7-101;

(18) evaluate compliance with the accreditation standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 2.** Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(vi) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by:

~~(a)~~ dividing the amount determined in subsection (1)(c) by the sum of:

~~(i)~~*(a)* the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

~~(ii)~~*(b)* the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000~~; and~~

~~(b) if applicable, subtracting the result of dividing any overpayment of the BASE budget levy in the prior year calculated as provided in 20-9-314(6)(b)(ii) that is available for reduction of the district's BASE budget levy by the current~~

~~total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000~~.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

**Section 3.** Section 20-9-166, MCA, is amended to read:

"**20-9-166. ~~(Temporary)~~ Financial support for transportation budget amendments and ~~covid-19-related~~ *significant* enrollment increases.** (1) Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application for state transportation reimbursement. The superintendent of public instruction shall approve or disapprove each application for state transportation reimbursement. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state transportation reimbursement that will be made available to the applicant district because of ~~the increase in enrollment or~~ additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

(2) (a) ~~Any increase in enrollment for a district at the October enrollment count for fiscal years 2022 and 2023 compared to the enrollment count of the district in October of the immediately preceding fiscal year is declared by the legislature to be related to the uncertainty created by covid-19 and qualifies the district for additional financial support as described in this subsection (2). The legislature also declares that the state's fiscal challenges in the biennium beginning July 1, 2021, are a direct result of the economic downturn resulting from covid-19~~ *When a district experiences an enrollment increase based on the October enrollment count, the district may be eligible for a significant enrollment increase payment in support of the district's general fund as described in this subsection (2).*

(b) ~~Subject to reduction under subsection (2)(c), the amount of additional financial support~~ *To be eligible for a significant enrollment increase payment, a district's October enrollment count in the current year converted to ANB must exceed the district's budget limit ANB for the school fiscal year 3 years prior by 110% or more. The significant enrollment increase payment* the district qualifies for must be calculated by the superintendent of public instruction *no later than December 1 following the October enrollment count* as the difference between*:* ~~the district's BASE budget for that fiscal year and the amount of the district's BASE budget~~

*(i) an amount equal to 80% of the district's total per-ANB entitlement for that fiscal year* if the district's budget limit ANB ~~for that fiscal year~~ was calculated using the district's actual October enrollment count ~~in the current school year~~

~~in place of the average of the preceding year's October and February enrollment counts~~ *minus the absorption factor; and*

*(ii) 80% of the district's total per-ANB entitlement for that fiscal year.*

~~(c) (i) The total amount of the additional financial support for a district must be reduced by 10% of the Title I allocation and any portion of an amount allocated on a per-quality-educator basis to the district as of the enrollment count date pursuant to:~~

~~(A) the Coronavirus Response and Relief Supplemental Appropriations Act of 2021; and~~

~~(B) the American Rescue Plan Act of 2021, except for the 20% portion of the funds specifically earmarked and restricted to spending on learning loss programs.~~

~~(ii) The superintendent of public instruction shall consider the 10% amount calculated under this subsection (2)(c) as an expense eligible for reimbursement under catalog of federal domestic assistance number 84.425D.~~

~~(d) The only increases in financial support resulting from increased enrollment are the increases described in this subsection (2). The superintendent of public instruction shall allocate the additional financial support to a qualifying district, first from federal money appropriated by the legislature for this purpose and if necessary, from the BASE aid appropriation in House Bill No. 2.~~

*(c) (i) The superintendent of public instruction shall notify a district of the district's eligibility for a significant enrollment increase payment and the amount by December 15.*

*(ii) The trustees of the district shall determine at the next scheduled board meeting and no later than March 1 whether to accept the full or a partial amount of the payment and adopt a general fund budget amendment for any accepted amount. A budget amendment under this section must be made by resolution of the trustees of the district and is not subject to the requirements of other budget amendments under Title 20, chapter 9, part 1. The trustees shall provide a copy of the budget amendment to the superintendent of public instruction in a manner determined by the superintendent of public instruction.*

*(iii) On receiving a copy of the budget amendment, the superintendent of public instruction shall disburse from the BASE aid appropriation in House Bill No. 2 the amount of the accepted payment distributed with the remaining direct state aid payments for that fiscal year pursuant to 20-9-344.*

~~(c)~~*(d)* A district receiving additional financial support under this subsection (2) shall deposit the money in the district's ~~miscellaneous programs~~ *general* fund and use it to address costs associated with the enrollment increase.

*(e) For the purposes of this subsection (2), "absorption factor" means an ANB amount rounded to the nearest whole number equal to the sum of 5 ANB plus 3% of the district's budget limit ANB for that fiscal year."* ~~(Terminates June 30, 2023--sec. 11, Ch. 551, L. 2021.)~~

**~~20-9-166. (Effective July 1, 2023) State financial aid for budget amendments.~~**~~Whenever a final budget amendment has been adopted for the general fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid. Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent~~

~~of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of direct state aid or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment or additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made. "~~

**Section 4.** Section 20-9-308, MCA, is amended to read:

"**20-9-308. BASE budgets and general fund budget limits.** (1) ~~(a)~~ The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. ~~Except as provided in subsection (1)(b), the~~ *The* trustees of a district may adopt a general fund budget up to the greater of:

~~(i)~~*(a)* the current year maximum general fund budget; or

~~(ii)~~*(b)* the previous year's general fund budget plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.

~~(b) When anticipated enrollment increases under 20-9-314 are not realized in the previous year, the trustees may adopt a general fund budget up to the greater of:~~

~~(i) the current year maximum general fund budget; or~~

~~(ii) the previous year's adopted general fund budget recalculated to reflect the previous year's actual enrollment pursuant to 20-9-314(6)(b) plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.~~

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

**Section 5.** Section 20-9-310, MCA, is amended to read:

"**20-9-310. Oil and natural gas production taxes for school districts -- allocation and limits.** (1) Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) Except as provided by 15-36-332(9), the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the guarantee account provided for in 20-9-622.

(4) (a) Subject to the limitation in subsection (1) and the conditions in subsection (4)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (4)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (4)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (4)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (4)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than $1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of $1 million or more and ~~has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314~~ *was eligible for a significant enrollment increase payment pursuant to 20-9-166* in the *fiscal* year immediately preceding the fiscal year to which the provisions of this subsection (4) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(5) (a) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district ~~with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314~~ *that was eligible for a significant enrollment increase payment pursuant to 20-9-166*. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the *fiscal* year immediately following the fiscal year in which ~~the office of public instruction has approved the district's unusual enrollment increase~~ *the district was eligible* and must be calculated by multiplying $45,000 times each additional ANB ~~approved by the superintendent of public instruction as provided in 20-9-314~~ *used to calculate the significant enrollment increase payment pursuant to 20-9-166, including the absorption factor reduction*.

(b) For a district in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget in the district's most recent operating year, determined in accordance with 20-9-308.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall."

**Section 6.** Section 20-9-313, MCA, is amended to read:

"**20-9-313. Circumstances under which regular average number belonging may be increased.** (1) The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(c) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

~~(d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on~~

~~estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.~~

~~(c)~~*(d)* for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

~~(f)~~*(e)* a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program."

**Section 7.** Section 11, Chapter 551, Laws of 2021, is amended to read:

**"Section 11. Termination.** [~~Section 1 and 3~~ *Section 1]* ~~terminate~~ *terminates* June 30, 2023."

**Section 8. Repealer.** The following section of the Montana Code Annotated is repealed:

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.

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

**Section 10. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2023.

Approved April 25, 2023

# CHAPTER NO. 241

[HB 63]

AN ACT TO GENERALLY REVISE CIVIL AND CRIMINAL LIABILITY LAWS RELATED TO MEMBERS OF THE ARMED FORCES AND THE MONTANA NATIONAL GUARD; LIMITING CIVIL LIABILITY FOR EMERGENCY CARE RENDERED AT THE SCENE BY MEMBERS OF THE NATIONAL GUARD; PROVIDING AN AFFIRMATIVE DEFENSE IN CRIMINAL ACTIONS OF JUSTIFIABLE USE OF FORCE IN DEFENSE OF MILITARY EQUIPMENT AND INFORMATION; AND AMENDING SECTION 27-1-714, MCA.

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

**Section 1.** Section 27-1-714, MCA, is amended to read:

"**27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency.** (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, any search and rescue volunteer, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the

scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering the emergency care or assistance.

(2) Subsection (1) includes*:*

*(a)* a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for the volunteer services does not exceed 25% of the person's gross annual income or $3,000 a calendar year, whichever is greater. Reimbursement for search and rescue expenses is not compensation for purposes of this section.

*(b) a member of the army national guard or air national guard acting in an official capacity*.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, the refusal does not constitute gross negligence or a willful or wanton act or omission."

**Section 2. Use of force in defense of military equipment and information.** (1) A member of the armed forces or a member of the national guard who is on official duty defending military equipment is privileged to use reasonable force as necessary, including deadly force, in accordance with published military regulations and doctrine regarding the use of force.

(2) The servicing staff judge advocate shall provide a briefing on the rules for the use of force to members of the armed forces and members of the national guard prior to defending military equipment. The failure of a member of the armed forces or a member of the national guard to receive a briefing on the rules for the use of force, through no fault of the individual member, does not preclude the individual member from asserting this privilege.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [section 2].

Approved April 25, 2023

# CHAPTER NO. 242

[HB 72]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO RESTAURANT BEER AND WINE LICENSES; ELIMINATING RESTAURANT BEER AND WINE LICENSE OWNERSHIP RESTRICTIONS; ELIMINATING REDUNDANT PROVISIONS RELATING TO THE TRANSFER OF OWNERSHIP; REVISING THE PAYMENT DEADLINE OF THE LICENSING FEE; CLARIFYING THE NUMBER OF SEATING LICENSES THAT MAY BE ISSUED; AND AMENDING SECTION 16-4-420, MCA.

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

**Section 1.** Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection ~~(6)~~ *(4)* and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;. *The department may audit the 65% requirement at any time in the first year of ownership.*

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule; *and*

~~(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and~~

~~(d)~~*(c)* the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

~~(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.~~

~~(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.~~

~~(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.~~

~~(3)~~*(2)* A completed application for a license under this section and the appropriate application fee, as provided in subsection ~~(11)~~ *(8)*, must be submitted to the department. The department shall investigate the items relating to the application as described in subsections ~~(3)(a) and (3)(b)~~*(2)(a) and (2)(b)*. Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license; and

(b) (i) the applicant's premises are suitable for the carrying on of the business;

(ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for carrying on with the business in accordance with 16-4-417; or

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and the seating capacity stated on the application is correct.

~~(4)~~*(3)* An application for a ~~beer and wine~~ license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

~~(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity~~

~~stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.~~

~~(6)~~*(4)* (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food *prepared on the premises* and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food *prepared on the premises*.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant~~; and~~. *The dining room for the restaurant must contain at least half of the total available seats.*

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. ~~The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.~~

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

*(c) The provisions of subsections (4)(a)(iv) and (4)(b) do not apply to a restaurant for which a restaurant beer and wine license was in effect as of April 9, 2009, or to subsequent renewals of that license.*

~~(7) (a) A restaurant beer and wine license not issued through a competitive bidding process as provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an owner.~~

~~(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.~~

~~(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.~~

~~(8)~~*(5)* (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection ~~(8)(c)~~ *(5)(c)*, for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the

number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection ~~(8)~~ *(5)* based on the percentage amounts described in subsections ~~(8)(a)(i) through (8)(a)(v)~~*(5)(a)(i) through (5)(a)(v)*, the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection ~~(8)(a)(i)~~ *(5)(a)(i)*, there must be a one-time adjustment of four additional licenses for that quota area.

(d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(A) the county boundary within which the incorporated city or incorporated town is located; or

(B) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a

Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

~~(9)~~*(6)* (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection ~~(8)(d)~~ *(5)(d)* of this section may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection ~~(9)(a)~~ *(6)(a)* of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection ~~(9)(a)~~ *(6)(a)*, the department may publish the availability of more than one new license a year until the quota has been reached.

~~(10)~~*(7)* Except as provided in subsection ~~(9)(b)~~ *(6)(b)*, when more than one new restaurant beer and wine license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

~~(11)~~*(8)* When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available.

~~(12)~~*(9)* When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection ~~(9) or (11)~~ *(6) or (8)*, the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

~~(13)~~*(10)* (a) Except as provided in subsection ~~(13)(b)~~ *(10)(b)*, beer and wine may be sold for off-premises consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, *the purchase price of the off-premises beer and wine may not exceed the purchase price of the food ordered,* the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

(b) A restaurant beer and wine licensee may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

~~(14)~~*(11)* ~~An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant.~~

~~Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee.~~ The amount of the initial licensing fee is determined according to the following schedule *and must be paid before the license is issued*:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or fewer;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

~~(15)~~*(12)* The annual fee for a restaurant beer and wine license is $400.

~~(16)~~*(13)* If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

~~(17)~~*(14)* The number of ~~beer and wine~~ licenses issued *under this section* to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the ~~total licenses issued~~ *number of restaurant beer and wine licenses allowed in the quota area.*

~~(18)~~*(15)* Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

~~(19)~~*(16)* The department may adopt rules to implement this section."

Approved April 25, 2023

# CHAPTER NO. 243

[HB 107]

AN ACT REVISING LAWS RELATED TO EMERGENCY PREPAREDNESS AND RESPONSE; ALIGNING THE RESPONSIBILITIES OF THE STATE EMERGENCY RESPONSE COMMISSION WITH FEDERAL LAW; ASSIGNING CERTAIN RESPONSIBILITIES TO THE DIVISION OF DISASTER AND EMERGENCY SERVICES OF THE DEPARTMENT OF MILITARY AFFAIRS; REVISING THE FUNDING PRIORITIES OF THE STATE EMERGENCY RESPONSE COMMISSION; REVISING THE REQUIREMENTS OF THE STATE DISASTER AND EMERGENCY PLAN; AMENDING REFERENCES TO HAZARDOUS MATERIAL INCIDENT RESPONSE TEAMS; REVISING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 10-3-103, 10-3-105, 10-3-301, 10-3-310, 10-3-401, 10-3-904, 10-3-1202, 10-3-1203, 10-3-1204, 10-3-1207, 10-3-1208, 10-3-1209, 10-3-1210, 10-3-1214, 10-3-1216, AND 10-3-1217, MCA.

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

**Section 1.** Section 10-3-103, MCA, is amended to read:

"**10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "All-hazard incident management assistance team" means a team that includes any combination of personnel representing local, state, or tribal entities that has been established by the ~~state emergency response commission provided for in 10-3-1204~~ *division* for the purpose of local incident management

intended to mitigate the impacts of an incident prior to a disaster or emergency declaration.

(2) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(3) "Department" means the department of military affairs.

(4) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

(5) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(6) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

(7) "Division" means the division of disaster and emergency services of the department.

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

(9) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-303.

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

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

(12) "Religious organization" means:

(a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and temples; or

(b) a religious group, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.

(13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that involve the exercise of religion.

(14) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(15) "Tribal government" means the government of a federally recognized Indian tribe within the state of Montana.

(16) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."

**Section 2.** Section 10-3-105, MCA, is amended to read:

"**10-3-105. Division of disaster and emergency services -- duties.** (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, tribal governments, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, tribal governments, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; ~~and~~

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor*;*

*(o) establish all-hazard incident management assistance teams; and*

*(p) appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904*"

**Section 3.** Section 10-3-301, MCA, is amended to read:

"**10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an incident, emergency, or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of personnel and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

~~(2) The state disaster and emergency plan and program may not:~~

~~(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services; or~~

~~(b) deny a customer of a private business the ability to access goods or services provided by the private business.~~

~~(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.~~

*(2) The state disaster and emergency plan and program may not:*

*(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services; or*

*(b) deny a customer of a private business the ability to access goods or services provided by the private business.*

*(3) The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.*

~~(4)~~*(4)* In preparing and maintaining the state disaster and emergency plan and program, the division ~~may~~ *shall* seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

~~(5) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.~~

*(5) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.*"

**Section 4.** Section 10-3-310, MCA, is amended to read:

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

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

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

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

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

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and incident response costs incurred by an all-hazard incident management assistance team established under ~~10-3-1204~~ *10-3-103*.

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

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

**Section 5.** Section 10-3-401, MCA, is amended to read:

"**10-3-401. Local and interjurisdictional disaster and emergency plan -- distribution.** (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials;

(b) the disaster and emergency chain of command;

(c) local evacuation authority and responsibility; and

(d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

*(3) The political subdivision of each local emergency planning district as established in 10-3-1204(11) shall prepare and distribute on behalf of the principal executive officer a hazardous material emergency response plan that provides for the plan provisions in the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11003, et seq. Each emergency plan must include but is not limited to:*

*(a) (i) the identification of facilities subject to the requirements of the federal act within the emergency planning district;*

*(ii) the identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 11002(a); and*

*(iii) the identification of additional facilities contributing to or subjected to additional risk due to their proximity to facilities subject to the requirements of the federal act, such as hospitals or natural gas facilities;*

*(b) the methods and procedures that facility owners and operators and local emergency response and medical personnel shall follow to respond to the release of extremely hazardous substances;*

*(c) the designation of a community emergency coordinator and facility emergency coordinators who shall make determinations necessary to implement the plan;*

*(d) procedures for providing reliable, effective, and timely notification by the community emergency coordinator and the facility emergency coordinators to persons designated in the emergency plan and to the public that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;*

*(e) the methods for determining the occurrence of a release and the area or population likely to be affected by the release;*

*(f) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this part and an identification of the persons responsible for the equipment and facilities;*

*(g) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;*

*(h) training programs, including schedules for the training of local emergency response and medical personnel; and*

*(i) the methods and schedules for exercising the emergency plan.*

*(4) After completion of the hazardous material emergency response plan, the local emergency planning committee shall submit a copy of the plan to the state emergency response commission.*"

**Section 6.** Section 10-3-904, MCA, is amended to read:

"**10-3-904. 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~~ *division as established in 10-3-105*.

(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 7.** Section 10-3-1202, MCA, is amended to read:

"**10-3-1202. Purpose.** It is the purpose of this part to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of *hazardous material* incidents;

(4) provide for the cooperation of other state agencies and local governments in *hazardous material* incident management; and

(5) provide for the formulation of a comprehensive~~, statewide incident management and~~ hazardous material response support plan."

**Section 8.** Section 10-3-1203, MCA, is amended to read:

"**10-3-1203. Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

*(5) "Hazardous material incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.*

~~(5)~~*(6)* "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

~~(6)~~*(7)* (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

~~(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.~~

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(10) "Local emergency response authority" means the agency designated by the city~~,~~ *or* county~~, or commission~~ to be responsible for the management of ~~an~~ *a hazardous material* incident at the local level.

(11) "Plan" means the ~~Montana incident management and~~ hazardous material response support plan.

(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

~~(13) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.~~

~~(14)~~*(13)* "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment."

**Section 9.** Section 10-3-1204, MCA, is amended to read:

"**10-3-1204. State emergency response commission -- members -- duties -- establishment of *hazardous material* incident response and *hazardous material* incident management teams.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of ~~29~~ *8* 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,~~ *and* the department of public health and human services, ~~a fire service association, the fire services training school, the emergency medical services and trauma systems section of the public health and safety division in the department of public health and human services, the department of fish, wildlife, and parks, the department of agriculture, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, Montana's petroleum industry, Montana's insurance industry, the university system, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. At least one representative must be a member of a local emergency planning committee~~ *a tribal emergency response commission member, and three people with hazardous material emergency planning experience*. Members of the commission serve terms of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint ~~two presiding officers from the appointees, who shall act as copresiding officers~~ *the presiding officer*.

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

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

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

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

(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~~ *teams*, local emergency responders, and other interested persons.

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

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

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency *response* authorities to respond to *hazardous material* incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to ~~an~~ *a hazardous material* incident must be defined by the plan. *The plan must be in accordance with and in support of the state disaster and emergency plan and program as provided in 10-3-301.*

(11) *Except that the division shall designate local emergency planning districts and shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law,* ~~The~~ *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., *including:*

*(a) establishing procedures for receiving and processing public requests for information collected under the federal act;*

*(b) appointing local emergency planning committees for each district; and*

*(c) supervising the activities of the local emergency planning committees* ~~except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law~~.

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

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

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

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

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

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

~~(15)~~*(13)* All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

**Section 10.** Section 10-3-1207, MCA, is amended to read:

"**10-3-1207. Commission budget and expenditures.** (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) *reimbursement for the nonfederal cost share for approved projects for local emergency planning committee development, local hazardous material emergency response plan development, local hazardous material incident response teams, and regional hazardous material incident response teams under eligible federal grants* ~~payment of workers' compensation premiums for coverage of state hazardous material incident response team members;~~

~~(b) training activities for the state hazardous material incident response team;~~

~~(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan~~; and

~~(d)~~*(b)* any remaining funds to be used at the discretion of the commission for programs related to the plan."

**Section 11.** Section 10-3-1208, MCA, is amended to read:

"**10-3-1208. Local emergency response authorities -- designation.** (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If ~~an~~ *a hazardous material* incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of this part."

**Section 12.** Section 10-3-1209, MCA, is amended to read:

"**10-3-1209. Local emergency response authorities -- powers and duties.** (1) Every local emergency response authority designated pursuant to this part shall respond to *hazardous material* incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to ~~an~~ *a hazardous material* incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If ~~an~~ *a hazardous material* incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the *hazardous material* incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall ~~define~~ *identify* in writing its incident management system and ~~specifically define the agency that~~ *identify the individual who* will be the incident commander.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed."

**Section 13.** Section 10-3-1210, MCA, is amended to read:

"**10-3-1210. Controlling provisions for state of emergency -- liability of responsible persons.** In the event that a state of emergency is declared by proper authority pursuant to 10-3-303, as the result of ~~an~~ *a hazardous material* incident, the provisions of 10-3-303 govern."

**Section 14.** Section 10-3-1214, MCA, is amended to read:

"**10-3-1214. Right to reimbursement.** (1) ~~State hazardous~~ *Hazardous* material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the ~~state~~ hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the ~~state~~ hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in this part and only if adequate funds are available."

**Section 15.** Section 10-3-1216, MCA, is amended to read:

"**10-3-1216. Cost recovery and civil remedies.** (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the ~~state~~ *regional* hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement."

**Section 16.** Section 10-3-1217, MCA, is amended to read:

"**10-3-1217. Liability of persons and response team members rendering assistance.** (1) The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:

(a) the state or a political subdivision of the state;

(b) the commission;

(c) the local emergency response authority;

(d) the ~~state~~ *regional* hazardous material incident response team;

(e) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and

(f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the ~~state~~ *regional* hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location."

Approved April 25, 2023

# CHAPTER NO. 244

[HB 114]

AN ACT REVISING THE APPLICATION PROCESS AND DEPARTMENT CONSIDERATION OF A PERMIT OR CHANGE IN AN APPROPRIATION RIGHT; REVISING TIMELINES FOR DEPARTMENT CONSIDERATION OF AN APPLICATION FOR A WATER RIGHT OR A CHANGE OF WATER RIGHT; REVISING NOTICE; PROVIDING FOR PRELIMINARY DETERMINATIONS OF A WATER RIGHT APPLICATION OR A CHANGE OF WATER RIGHT; PROVIDING FOR PUBLIC COMMENT; REVISING THE OBJECTIONS PROCESS; REVISING DEPARTMENT HEARINGS; EXTENDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-302, 85-2-307, 85-2-308, 85-2-310, AND 85-2-401, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1.** Section 85-2-302, MCA, is amended to read:

"**85-2-302. Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules*:*

*(a) for the premeeting application process pursuant to subsection (3)(b);*

*(b)* that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4~~. The rules must be adopted~~*; and*

*(c)* in compliance with Title 2, chapter 4.

(3) *(a)* The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

*(b) Prior to filing the application, an applicant may participate in a preapplication meeting with the department to discuss the application process. During this meeting, the applicant and the department will discuss the technical analyses to be completed for the application and if the applicant or the department will complete the technical analyses. A preapplication meeting must be documented on a form provided by the department and included with the application.*

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the

application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(c) If an application is for a permit or change in appropriation right from a shared point of a diversion or through a shared means of conveyance, the application is not correct and complete until the applicant submits proof to the department that a written notice of the application was provided to each owner of an appropriation right sharing the point of diversion or means of conveyance. For purposes of this subsection (4), "conveyance" means a canal, ditch, flume, pipeline, or other constructed waterway.

(5) *(a)* The department shall notify the applicant of any defects in an application within~~: 180 days~~

*(i) 15 business days of receipt of the application if the applicant has participated in a preapplication meeting; or*

*(ii) 30 business days of receipt of the application if the applicant has not participated in a preapplication meeting.*

*(b)* The defects *in an application* must be identified by reference to the rules adopted under subsection (2).

*(c)* If the department does not notify the applicant of any defects within ~~180 days~~ *the time allowed in subsection (5)(a)*, the application must be treated as a correct and complete application.

(6) *(a)* An ~~application does not lose priority of filing because of defects if the application is corrected or completed~~ *applicant shall submit a deficiency response to the defects identified in subsection (5)(a)* within 120 days of the date of initial notification of the defects. *If the applicant does not provide a deficiency response within 120 days, the application must be terminated.*

~~(7) An application not corrected or completed within 120 days of the date of initial notification of the defects is terminated.~~

*(b) The department shall determine if the application is correct and complete or terminate the application within 30 days of receipt of a deficiency response. An application not terminated within 30 days of the deficiency response is considered correct and complete.*

~~(8)~~*(7)* Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 2.** Section 85-2-307, MCA, is amended to read:

"**85-2-307. Notice of *receipt of* application for permit or change in appropriation right -- *draft preliminary determination -- extensions -- updated draft preliminary determination -- public comments -- issuance of preliminary determination.*** (1) ~~Upon~~ *On* receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website. *The notice must be updated on the website when an application is determined to be correct and complete.*

(2) ~~(a)~~ Within ~~120 days of the receipt of a correct and complete application for a permit or change in appropriation right~~ *60 days of receiving a correct and complete application if the applicant has completed a preapplication meeting and the department has prepared the technical analyses or within 120 days of receiving a correct and complete application if the department has not prepared the technical analyses*, the department:

~~(i)~~*(a)* may meet ~~informally~~ with the applicant, the persons listed in ~~subsection (2)(d)~~ *subsection (4)(f)*, and persons who may claim standing pursuant to 85-2-308 to discuss the application;

~~(ii)~~*(b)* shall make a written *draft* preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

~~(iii)~~*(c)* may include conditions in the written *draft* preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

~~(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.~~

~~(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.~~

*(3) (a) An applicant has 15 business days from issuance of a draft preliminary determination to request an extension of time to submit additional information. The department may grant an extension of up to 180 days for the applicant to submit additional evidence. The department shall provide the applicant with written notice of the extension deadline.*

*(b) The department may revise its draft preliminary determination based on information received under subsection (3)(a). The department shall issue an updated draft preliminary determination within 60 days after the earliest date of:*

*(i) the extension deadline set pursuant to subsection (3)(a); or*

*(ii) the department's receipt of written notice from the applicant stating submittal of all additional information to the department is considered correct and complete.*

*(c) If the department's updated draft preliminary determination:*

*(i) is to deny the application, the department shall hold a hearing as provided in 85-2-310; or*

*(ii) is to grant the application or grant the application in modified form, the department shall provide notice of the opportunity to provide public comment pursuant to subsection (4).*

*(d) If the applicant does not request an extension of time, the department shall:*

*(i) provide notice of the draft preliminary determination to grant the application or grant the application in modified form and also provide notice of the opportunity to provide public comment pursuant to subsection (4); or*

*(ii) adopt a draft preliminary determination to deny the application as the final determination.*

*(4) (a) The department shall prepare a notice of the opportunity to provide public comment on a draft preliminary determination or an updated draft preliminary determination issued for an application.*

*(b) The notice of the opportunity to provide public comment must:*

*(i) state that no more than 30 days after the date of publication, a person may file a public comment about the application with the department on a form provided by the department; and*

*(ii) contain facts pertinent to the application, including a summary of the draft preliminary determination and any conditions.*

*(c) The department shall publish the notice once in a newspaper of general circulation in the area of the source of the appropriation right and post the notice on the department website.*

*(d) A public comment must identify how one or more criteria for the issuance of a permit of a change in appropriation right is not adequately addressed in*

*a draft preliminary determination issued for the application. The department may adopt additional rules for public comments.*

*(e) A person has standing to file a public comment pursuant to this section if the property, water rights, or interests of the person would be adversely affected by the proposed appropriation.*

~~(d)~~*(f)* Before the date of publication *of the notice of the opportunity to provide public comment*, the department shall also serve the notice by first-class mail ~~upon~~ *on*:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

~~(e)~~*(g)* The department may, in its discretion, also serve notice ~~upon~~ *on* any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

~~(f)~~*(h)* The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

~~(3) The notice must state that by a date set by the department, not less than 15 days or more than 60 days after the date of publication, persons may file with the department written objections to the application.~~

*(5) (a) Within 30 days after the date of publication of the notice of the opportunity to provide public comment, the department shall consider the public comments, respond to the public comments, and issue a preliminary determination to grant the application, grant the application in modified form, or deny the application.*

*(b) If, after considering the public comments subject to subsection (5)(a), the department's preliminary determination is to:*

*(i) deny the application, the department shall hold a hearing as provided in 85-2-310; or*

*(ii) grant the application or grant the application in a modified form, a person may file an objection to an application pursuant to 85-2-308.*

*(c) If no public comments are received pursuant to subsection (4), the department's preliminary determination is adopted as the final determination.*"

**Section 3.** Section 85-2-308, MCA, is amended to read:

"**85-2-308. Objections.** *(1) (a) The department shall provide notice of the opportunity to object to a preliminary determination issued pursuant to 85-2-307(5). The notice must state that no more than 30 days after the date of publication of the notice, a person may file a written objection to the application with the department.*

*(b) A person who has standing pursuant to this section, including the applicant, may object only to issues already identified in a public comment properly filed with the department pursuant to 85-2-307(4) or raised in a hearing pursuant to 85-2-310.*

~~(1)~~*(2)* (a) An objection to an application under this chapter must be filed by the date specified by the department under ~~85-2-307(3)~~ *subsection (1).*

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

~~(2)~~*(3)* For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, 85-2-407, 85-2-408, and 85-2-436, if applicable, are not met.

~~(3)~~*(4)* A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

~~(4)~~*(5)* For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

~~(5)~~*(6)* An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 *business* days from the date of notification of the defects is terminated.

~~(6)~~*(7)* An objection is valid if the objector has standing pursuant to ~~subsection (3)~~ *subsection (4)*, has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

**Section 4.** Section 85-2-310, MCA, is amended to read:

"**85-2-310. Action on application for permit or change in appropriation right.** (1) (a) If the department ~~proposes~~ *issues an updated draft preliminary determination or a preliminary determination* to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail ~~upon~~ *on* the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) ~~Upon~~ *On* request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

*(c) A decision to deny a permit or change in appropriation right following a hearing under this subsection (1) is final.*

(2) *(a)* ~~A proposal to grant a permit or change in appropriation right with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the permit or change in appropriation right in its preliminary determination pursuant to 85-2-307~~ *A hearing under subsection (1) is limited to the evidence presented in support of the application considered by the department pursuant to 85-2-302 and 85-2-307.*

*(b) If the department determines at a hearing held under subsection (1) that an application may proceed as a draft preliminary determination to grant or a draft preliminary determination to grant in a modified form, then the department shall modify the draft preliminary determination consistent with*

*the determination of the hearing and proceed to provide notice of the opportunity to provide public comment pursuant to 85-2-307(4).*

*(c) The department shall issue its determination on a hearing held under subsection (1) within 90 days of the close of the administrative record.*

(3) If valid objections *filed pursuant to 85-2-308* are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections *filed pursuant to 85-2-308* to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right *under 85-2-307*, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny*, grant in a modified form,* or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 *by issuing a final determination* within 90 days after the administrative record is closed *for a hearing held pursuant to 85-2-309*

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

~~(7) (a) Except as provided in subsection (6), if the department proposes to grant a permit or change in appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of conditions or changes to conditions required for approval does not constitute a modification of the application.~~

~~(b) The department shall serve notice of a preliminary determination to grant a permit or change in appropriation right in a modified form by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing pursuant to 2-4-604 to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be preliminarily determined to be granted in the modified form by filing a request within 30 days after the notice is mailed. The notice must state that the permit or change in appropriation right will be preliminarily determined to be granted as modified unless a hearing is requested.~~

~~(8)~~*(7)* The department may cease action ~~upon~~ *on* an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based ~~upon~~ *on* the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

~~(9)~~*(8)* For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection ~~(9)~~*(8)*(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) except as provided in subsection ~~(10)~~ *(9)*, if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

~~(10)~~*(9)* If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection ~~(9)~~*(8)*(c)(v). The applicant ~~must~~ *shall* provide information detailing the proposed place of use."

**Section 5.** Section 85-2-401, MCA, is amended to read:

"**85-2-401. Priority -- recognition and confirmation of changes in appropriations issued after July 1, 1973.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310~~(8)~~*(7)*, and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department."

**Section 6. Appropriation.** (1) There is appropriated $638,299 from the general fund to the department of natural resources and conservation in fiscal year 2024 and $604,025 in fiscal year 2025. The appropriation is intended to partially fund 13.00 FTE and associated operating costs.

(2) There is appropriated $638,299 to the department of natural resources and conservation from a state special revenue account to the credit of the department of natural resources and conservation in fiscal year 2024 and $604,025 in fiscal year 2025. The appropriation is intended to partially fund 13.00 FTE and associated operating costs.

(3) It is the intent of the legislature that the appropriation for fiscal year 2025 and the 13.00 FTE be included as part of the base budget for the department of natural resources and conservation for the biennium beginning July 1, 2025, and that the state special revenue would be derived from fees charged to applicants.

**Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2024.

(2) [Section 6] and this section are effective July 1, 2023.

**Section 9. Termination.** [This act] terminates June 30, 2031.

Approved April 25, 2023

# CHAPTER NO. 245

[HB 135]

AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING INDEPENDENT CONTRACTOR STATUS; CLARIFYING DUTIES OF EMPLOYERS; REVISING THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE PURCHASE OF THE FIRST 210 HOURS OF SERVICE; REVISING THE REDEPOSIT OF CONTRIBUTIONS PREVIOUSLY WITHDRAWN FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING EARNED COMPENSATION LIMITATIONS; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; CLARIFYING THE CALCULATION OF AVERAGE FINAL COMPENSATION; CLARIFYING THE MEDICAL EXAMINATION OF A DISABILITY RETIREE; CLARIFYING PAYMENTS ON THE DEATH OF A RETIREE; AMENDING SECTIONS 19-20-208, 19-20-409, 19-20-417, 19-20-427, 19-20-715, 19-20-719, 19-20-805, 19-20-901, 19-20-903, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1. Establishing independent contractor status.** (1) (a) An individual working in a position reportable to the retirement system is presumed to be a common law employee of the employer and not an independent contractor.

(b) Until the status of an individual working in a position reportable to the retirement system is conclusively established to be that of an independent contractor, the individual must be reported to the retirement system as an active member or working retiree, as appropriate, not as an independent contractor.

(2) (a) An employer who asserts that an individual working in a position reportable to the retirement system is an independent contractor shall conclusively establish that the individual is an independent contractor and not a common law employee of the employer by:

(i) a written determination prepared by an attorney, an employment or human resources professional, or another individual who is qualified to make worker status determinations;

(ii) an order of a court of competent jurisdiction; or

(iii) internal revenue service form SS-8.

(b) (i) An individual making the determination must provide with their written determination their full name, professional designations, business name, business address, and business telephone number.

(ii) The written determination or order must comprehensively address the internal revenue service criteria related to the facts and circumstances of the specific worker in the specific position at issue and must provide a reasoned discussion of each criterion and its application to the specific facts and circumstances of the work and the position, not merely provide a conclusory statement of finding.

(iii) An independent contractor exemption certificate by the Montana department of labor and industry must meet all of the requirements of this subsection (2).

(3) Any costs incurred to conclusively establish the independent contractor status of an individual working in a position reportable to the retirement system, as specified in this section, must be the sole responsibility of the employer.

**Section 2.** Section 19-20-208, MCA, is amended to read:

"**19-20-208. Duties and liability of employer.** (1) Each employer shall:

(a) (i) each month, report the name, social security number, time worked, and gross earnings of each employed member; and

(ii) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602 and 19-20-608~~;~~ and transmit the contributions to the executive director of the retirement board;

(b) transmit to the ~~executive director of the~~ retirement ~~board~~ *system* the employer's contributions prescribed by 19-20-605 and 19-20-609~~;~~ at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement ~~board~~ *system*, furnish information ~~to the board~~ that is required in the discharge of the ~~board's~~ *retirement system's* duties*, including financial, personal services, or other information or documentation requested by the retirement system to verify proper retirement system reporting and contribution remittance related to any individual hired by, working for, or paid by the employer, whether as a common law employee, an independent contractor, an employee or contractor of a third party, a volunteer, or in any other capacity*;

(d) ~~upon~~ *on* the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the university system retirement program under Title 19, chapter 21; and

(g) at the request of the retirement ~~board~~ *system*, certify the names of all persons who are eligible for membership or who are members of the retirement system.

~~(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.~~

~~(3)~~*(2)* An employer shall submit a wage and contribution report to the retirement system every month, including for any month in which the employer does not pay compensation reportable to the retirement system."

**Section 3.** Section 19-20-409, MCA, is amended to read:

"**19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) *(a)* An active member may at any time before retirement file a written application with the ~~retirement board~~ *teachers' retirement system* to ~~purchase~~ *transfer* all of the member's ~~previous~~ service credit ~~in~~ *then on account with* the public employees' retirement system *to the teachers' retirement system if the following requirements are met:*

*(i) the member is eligible to withdraw from the public employees' retirement system; and*

*(ii) member and employer contributions are directly transferred from the public employees' retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).*~~. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).~~

~~(2)~~*(b)* The public employees' retirement system shall transfer *employer contributions* to the teachers' retirement system *in* an amount equal to 72% of the amount ~~paid by the~~ *of* member *contributions and accrued interest to be transferred as provided in subsection (1)(c).*

~~(3)~~*(c)* The ~~member shall pay either directly or by~~ *public employees' retirement system* ~~transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination~~ *shall transfer member contributions to the teachers' retirement system in an amount equal to the total amount of the member's contributions then on account with the public employees' retirement system, plus all interest accrued on the member contributions from the date of deposit* until *the date the* ~~a~~ transfer is received by the *teachers'* retirement system~~;~~. *Interest must be* based on the interest tables in use by the public employees' retirement system.

*(d) (i) On completion of the transfer, the teachers' retirement system shall credit the member with creditable service equal to the service credit that had been on account with the public employees' retirement system, subject to limitation as provided in 19-20-401(9).*

*(ii) The transferred service credit must count toward vesting in a benefit with the teachers' retirement system. If, at the time of retirement, the member does not have sufficient years of membership service with the teachers' retirement system to calculate the members' average final compensation under plan terms, compensation must be credited to the period of transferred service credit necessary to calculate the member's average final compensation as provided in 19-20-805(4).*

~~(4)~~*(iii)* A member who ~~purchases~~ *transfers* service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, *19-20-408,* 19-20-410, or 19-20-426.

~~(5) The retirement board shall determine the service credits that may be transferred.~~

~~(6) If an active member who also has service credit in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers'~~

~~retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).~~

*(2) (a) The beneficiary of a member of the teachers' retirement system who dies while an active member and while also having service credit on account with the public employees' retirement system may apply to have the deceased member's service transferred from the public employees' retirement system to the teachers' retirement system if the following requirements are met:*

*(i) the member had not previously retired under either retirement system;*

*(ii) the member was not vested in a benefit with either retirement system at the time of death;*

*(iii) the member's creditable service following transfer will entitle the beneficiary to receive a survivor benefit from the teachers' retirement system in the form of a monthly benefit payable for the beneficiary's lifetime;*

*(iv) at least one eligible beneficiary will elect the lifetime benefit;*

*(v) each beneficiary entitled to payment on behalf of the deceased member from either retirement system prior to transfer must be an individual and must also be a beneficiary entitled to payment on behalf of the deceased member from the other retirement system; and*

*(vi) the transfer of service credit from the public employees' retirement system must constitute a full withdrawal of the deceased member's service credit from the public employees' retirement system.*

*(b) Member and employer contributions must be transferred directly from the public employees' retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).*

*(c) (i) On completion of the transfer, the teachers' retirement system shall credit the member with creditable service equal to the service credit that had been on account with the public employees' retirement system.*

*(ii) If the member does not have sufficient years of membership service with the teachers' retirement system to calculate the member's average final compensation under plan terms, compensation must be credited to the period of transferred service credit necessary to calculate the member's average final compensation as provided in 19-20-805(4).*

~~(7)~~*(3)* (a) If the teachers' retirement ~~board~~ *system* determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement ~~board~~ *system* shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection ~~(7)~~ *(3)* must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the ~~employing entity~~ *employer* where the error occurred.

~~(8)~~*(4)* A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member is vested in the teachers' retirement system and has completed at least 1 full year of active membership in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection ~~(8)~~ *(4)*, the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection ~~(8)~~ *(4)*.

~~(9)~~*(5)* Creditable service purchased under subsection ~~(8)~~ *(4)* must be determined according to the laws and rules governing service credit in the public employees' retirement system."

**Section 4.** Section 19-20-417, MCA, is amended to read:

"**19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported.** (1) A substitute teacher or part-time teacher's aide ~~who did not elect membership~~ *who has filed an irrevocable election with their employer not to participate in the retirement system for the first 210 hours of service* under 19-20-302 and who subsequently becomes a member *within the same fiscal year* must be awarded creditable service for the *first 210 hours of* service ~~not reported~~ if the member contributes the employee and employer contributions that would have been made if the member had been a member from the ~~date of hire~~ *first date of service in that fiscal year*, plus interest *at the current actuarial assumed rate of investment return*.

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member *within the same fiscal year* may purchase ~~this service~~ *the first 30 days of service* if the ~~person~~ *member* contributes the employee and employer contributions that would have been made if the person had been a member from the ~~date of hire~~ *first date of service in that fiscal year*, plus interest *at the current actuarial assumed rate of investment return*.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest *at the current actuarial assumed rate of investment return*.

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

*(5) Only one service purchase may be made by any member under subsection (1) or (2).*"

**Section 5.** Section 19-20-427, MCA, is amended to read:

"**19-20-427. Redeposit of contributions previously withdrawn.** (1) Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-608, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415.

(3) A member may not redeposit contributions previously withdrawn under this chapter after retirement benefit payments to the member have started, even if the member returns to active member status.

*(4) Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-908, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, an active member may purchase service credit previously accrued and withdrawn from the Montana public employees' retirement system by redeposit directly to the teachers' retirement system, subject to the following:*

*(a) the member is not an active member or an inactive member of the public employees' retirement system;*

*(b) the member has not previously used or transferred the same period of service withdrawn from the public employees' retirement system to purchase service in any other public retirement system;*

*(c) member and employer contributions and interest must be paid to the teachers' retirement system as follows:*

*(i) The member shall remit member contributions in an amount equal to the sum of the accumulated contributions that were refunded to the individual at the individual's last termination of membership in the public employees' retirement system plus interest at the actuarially assumed interest rate of the teachers' retirement system in effect on the date the written application is signed. Interest must be calculated from the date of refund from the public employees' retirement system until paid in full to the teachers' retirement system.*

*(ii) The public employees' retirement system shall transfer employer contributions to the teachers' retirement system in an amount equal to 72% of the member contributions and interest payable by the member as provided in subsection (4)(c)(i).*

*(d) a member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, or 19-20-426.*"

**Section 6.** Section 19-20-715, MCA, is amended to read:

"**19-20-715. Earned compensation -- limitations.** ~~(1)~~ Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For *the* purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

~~(2) (a) The earned compensation reported in each year that is used to make up the average final compensation may not be greater than 110% of the previous year's reported earned compensation, not including increases that result from movement on the employer's adopted salary matrix.~~

~~(b) Earned compensation in excess of the amount specified in subsection (2)(a) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b).~~"

**Section 7.** Section 19-20-719, MCA, is amended to read:

"**19-20-719. Guaranteed annual benefit adjustment -- rulemaking.** (1) On January 1 of each year, the retirement allowance payable to each tier one member or benefit recipient of a tier one member who is eligible under

subsection (3) must be increased by *1.5%.* ~~the amount provided in either subsection (1)(a) or (1)(b) as follows:~~

~~(a) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, 0.5%; or~~

~~(b) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the retirement board.~~

(2) On January 1 of each year, the retirement allowance payable to each tier two member or benefit recipient of a tier two member who is eligible under subsection (3) must *be increased by the amount provided in either subsection (2)(a) or (2)(b) as follows:*~~, if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, be increased by an amount equal to or greater than 0.5% but no more than 1.5%, as set by the retirement board.~~

*(a) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, 0.5%; or*

*(b) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the retirement board.*

(3) A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in this section if at least 36 monthly retirement benefit payments have been made prior to January 1 of the year in which the adjustment is to be made."

**Section 8.** Section 19-20-805, MCA, is amended to read:

"**19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to:

(a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average; or

(b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

(2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service during the 5 years preceding termination been full-time service.

(b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the member's termination is the compensation that the member would have earned in the 5 years used to calculate average final compensation had the member's part-time service during the 7 years preceding termination been full-time service.

(3) To determine the compensation that the member would have earned under subsection (2), the compensation reported must be divided by the part-time service credited to the member's account.

(4) (a) Subject to subsection (4)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service if a tier one member

or 5 consecutive years of full-time service if a tier two member reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

*(5) (a) The earned compensation reported in each year that is used to calculate the average final compensation may not be greater than 110% of the earned compensation for the next prior year of service reported to the teachers' retirement system. This limitation does not apply to an increase that results from movement on the employer's adopted salary matrix but does apply to an increase that results from additions to or adjustments of the employer's salary matrix or initial implementation of a salary matrix.*

*(b) Earned compensation in excess of the amount specified in subsection (5)(a) must be included in the calculation of average final compensation in the same manner as termination pay option 2 as provided in 19-20-716(1)(b).*"

**Section 9.** Section 19-20-901, MCA, is amended to read:

"**19-20-901. Eligibility for disability retirement -- determination by board.** (1) Except as provided in subsection (5), upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated.

(2) In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(3) In making a determination under subsection (2), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, ~~or~~ vocational rehabilitation counselor*, or any other health care provider or other professional determined by the retirement board to be qualified, competent, and necessary to assist the board in making the disability determination*;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (3)(c) are enforceable as provided in 2-4-104.

(4) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

(5) (a) A tier two member is not eligible for disability retirement if the member is or will be eligible for service retirement on or before the member's date of termination.

(b) A disability retirement application filed by a member who is ineligible for disability retirement under subsection (5)(a) will be processed as an application for a service retirement allowance."

**Section 10.** Section 19-20-903, MCA, is amended to read:

"**19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period ~~thereafter~~ *afterward*, the retirement board may require a disability benefit recipient who has not yet attained the age of 60 to undergo a medical examination by a physician*, psychologist, or any other health care provider or other professional determined by the retirement board to be qualified, competent, and necessary to assist the board in making the disability determination* ~~or physicians designated by the retirement board~~. The examination must be made at the place of residence of the benefit recipient or other place mutually agreed ~~upon~~ *on*. Based on 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 the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.

(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.

(3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a medical examination as required in subsection (1), the recipient's allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be revoked by the retirement board."

**Section 11.** Section 19-20-1001, MCA, is amended to read:

"**19-20-1001. Payments upon death of member prior to retirement.** (1) If a member dies before retirement:

(a) except as provided in subsection (2), a lump-sum refund of the member's account balance must be paid to the member's eligible beneficiary or beneficiaries;

(b) if the deceased member was vested and was an active member in the retirement system within 1 year before the member's death, the eligible beneficiaries receiving a refund under subsection (1)(a) or a retirement allowance under subsection (2) are entitled to receive in equal shares a $500 lump-sum death benefit; and

(c) subject to 19-20-1009, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(2) (a) In lieu of the refund provided for in subsection (1)(a), if the deceased member was vested, an eligible designated beneficiary who is an individual may elect to receive the beneficiary's interest as a retirement allowance for the beneficiary's lifetime. The retirement allowance must be determined as prescribed in 19-20-804, without reference to ~~19-20-715(2)(a)~~ *19-20-805(5)(a)*, in the same manner as if the member elected the option A joint and survivor annuity optional allowance provided for in 19-20-702(2).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) (i) If more than one eligible beneficiary elects to receive a retirement allowance, each is entitled to an equal share of the benefit.

(ii) In the event that all eligible beneficiaries who elected a retirement allowance die, the member's account balance, if any, will be paid out to the alternate beneficiary of the last surviving eligible beneficiary who elected a retirement allowance under subsection (2)(a)."

**Section 12.** Section 19-20-1002, MCA, is amended to read:

"**19-20-1002. Payments ~~upon~~ *on* death of retiree.** (1) In the event of the death of a retired member:

(a) a lump-sum death benefit of $500 is payable to the joint annuitant or in equal shares to the deceased retiree's eligible beneficiary or beneficiaries receiving benefits under either subsection (2), (3), or (4) and is in addition to those benefits *or, if there is no continuing benefit payable, to the deceased retiree's designated or alternate beneficiary*; and

(b) subject to 19-20-1009, the sum of $200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

(2) If the member was receiving a normal form retirement allowance, a lump-sum refund of the member's account balance*, if any,* must be paid to the eligible beneficiary or beneficiaries in equal shares.

(3) If the member was receiving a joint and survivor annuity optional retirement allowance:

(a) monthly benefits must continue to be paid to the joint annuitant; or

(b) if there is no surviving joint annuitant, a lump-sum refund of the member's account balance*, if any,* must be paid to the member's alternate beneficiary or beneficiaries in equal shares.

(4) If the retired member was receiving a 10-year or 20-year period certain retirement allowance, until the period has expired:

(a) if the eligible beneficiary is one or more individuals, the monthly benefits must continue to be paid to the eligible beneficiary or beneficiaries in equal shares. If there is more than one eligible beneficiary, upon the death of

one eligible beneficiary, the benefit amount payable to the deceased beneficiary must be redistributed in equal shares to the surviving eligible beneficiaries. If all eligible beneficiaries die before the period has expired, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the alternate beneficiary of the last surviving eligible beneficiary.

(b) if the eligible beneficiary is the deceased retiree's estate or trust, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the eligible beneficiary.

*(5) (a) Not including any minor child benefit of $200 a month payable under subsection (1)(b), if the only amount remaining payable on the account of a deceased retiree is the $500 death benefit and there are multiple individuals who are eligible designated or alternate beneficiaries to share in the $500 death benefit, any of the potential beneficiaries must be considered to have fully and irrevocably renounced their rights and interest to a share of the $500 death benefit when the following criteria are met:*

*(i) the retirement system is unable to identify or locate the individual;*

*(ii) if identified and located, the retirement system mailed notice of the beneficiary interest and required application materials to be completed and returned by the individual on two occasions at least 30 days apart and the individual failed to complete and return the required application materials to be received by the retirement system within 30 days of the second mailing by the retirement system;*

*(iii) at least one eligible beneficiary has completed and returned the required application materials to the retirement system;*

*(iv) at least 180 days has passed following the death of the retiree and, if required application materials were sent to the individual as described in subsection (5)(a)(ii), at least 30 days has passed since the date of the second mailing by the retirement system; and*

*(v) the retirement system has not received actual notice of formal or informal probate of the deceased retiree's estate.*

*(b) Any portion of the $500 death benefit may not be distributed until the total benefit can be distributed. The share of the $500 death benefit that would have been payable to a potential beneficiary considered to have renounced their interest under this provision must be distributed in equal shares to an eligible beneficiary who has been identified and located and who has completed and returned the required application materials. Distribution of the $500 death benefit to an eligible beneficiary is satisfaction in full of the retirement system's obligation for distribution of the $500 death benefit.*

*(c) This subsection (5) does not require the retirement system to distribute the $500 death benefit strictly within the timeframe specified or prohibit the retirement system from providing any additional process the retirement system believes to be reasonable and appropriate to identify, locate, and obtain required application materials from an eligible beneficiary.*"

**Section 13. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 3, and the provisions of Title 19, chapter 20, part 3, apply to [section 1].

**Section 14. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Sections 1, 3, and 5] are effective July 1, 2024.

**Section 15. Retroactive applicability.** [Section 7] applies retroactively, within the meaning of 1-2-109, to all guaranteed annual benefit adjustment increases on or after July 1, 2013.

Approved April 25, 2023

# CHAPTER NO. 246

[HB 154]

AN ACT GENERALLY REVISING LAWS RELATED TO NURSING LICENSING; REVISING MEDICATION AIDE II QUALIFICATIONS RELATING TO WORK EXPERIENCE; AND AMENDING SECTION 37-8-423, MCA.

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

**Section 1.** Section 37-8-423, MCA, is amended to read:

"**37-8-423. Medication aide II -- qualifications.** An applicant for a license to practice as a medication aide II shall submit to the board written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of public instruction;

(2) holds a valid certificate from the department of public health and human services as a certified nursing assistant;

(3) has been employed as a certified nursing assistant in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, for a minimum of ~~2 years~~ *1,000 hours*;

(4) holds a valid certificate in cardiopulmonary resuscitation;

(5) (a) has successfully completed a training program specified by the board that includes 100 hours of education consisting of classroom instruction, laboratory skills, and supervised medication administration related to basic pharmacology and principles of safe medication administration; or

(b) is currently licensed as a medication aide in another state with a program that is determined by the board to be reasonably equivalent to the board-specified program;

(6) has passed a board-approved competency examination with at least 80% proficiency; and

(7) has completed ~~12~~ *6* hours of annual continuing education in pharmacology and medication administration."

Approved April 25, 2023

# CHAPTER NO. 247

[HB 161]

AN ACT GENERALLY REVISING COMPUTER CRIME LAWS; PROVIDING DEFINITIONS; REVISING THE OFFENSE OF UNLAWFUL USE OF A COMPUTER; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-6-310 AND 45-6-311, MCA.

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

**Section 1.** Section 45-6-310, MCA, is amended to read:

"**45-6-310. ~~Definition~~ *Definitions* -- computer use.** As used in 45-6-311 *and this section*, the ~~term~~ *following definitions apply:*

*(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, computer network, or electronic device.*

*(2) "Authorization" means a process ensuring that correctly authenticated users can access only those resources for which the owner of the resource has given the users explicit permission.*

*(3) "Computer" means an electronic device used to create, receive, transmit, store, or process data of any kind, or to run programs stored on hardware or software, and includes any device attached physically or connected intangibly to the computer.*

*(4) "Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes but is not limited to a group of computer instructions, commonly called viruses or worms, that are self-replicating or self-propagating and that are designed to contaminate other computer programs or computer data, consume computer resources, modify destroy, record, or transmit data, or in some other fashion usurp or interfere with the normal operation of the computer, computer system, or computer network.*

*(5) "Computer credential" means:*

*(a) a password, token code, or other means of limiting access; or*

*(b) an account, address, username, handle, avatar, or other digital representation of a person.*

*(6) "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or any other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless technologies.*

*(7) "Computer system" means a device or collection of devices, including support or peripheral devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including but not limited to logic, arithmetic, data storage, data retrieval, data processing, communication, or control.*

*(8) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.*

*(9) "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including but not limited to a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for that purpose.*

*(10) "Encrypt" means the use of any process of data encryption including but not limited to cryptography, enciphering, or encoding of data, programs, information, image, signal, sound, computer, computer networks, or other electronic devices.*

*(11)* "~~obtain~~ *"Obtain* the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

*(12) "Trade secret" has the meaning provided in 30-14-402.*"

**Section 2.** Section 45-6-311, MCA, is amended to read:

"**45-6-311. Unlawful use of a computer -- *exceptions.*** (1) ~~A~~ *Except as provided in subsections (3), (4), (5), and (7), a* person commits the offense of unlawful use of a computer ~~if the~~ *when the* person knowingly or purposely *and without authorization*:

*(a) destroys or renders inoperable a computer, computer system, computer network or any part of a computer system or network with the purpose of making the device or system physically inaccessible or to render the data, programs, or supporting documentation inaccessible or unusable;*

~~(a)~~*(b)* obtains the use *or access* of any computer, computer system, or computer network without consent of the owner;

~~(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or~~

~~(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.~~

*(c) introduces a computer contaminant that deletes, modifies, or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device;*

*(d) destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device;*

*(e) discloses or takes data, programs, or supporting documentation that is a trade secret, confidential, or otherwise protected as provided by law or is data that materially compromises the security, confidentiality, or integrity of personal information as defined in 30-14-1704 residing or existing internal or external to a computer, computer system, computer network, or electronic device;*

*(f) introduces a computer contaminant to gain access to data, programs, supporting documentation, computer systems, including peripheral devices, or computer networks to delete, encrypt, modify, append, or otherwise render unavailable data, programs, supporting documentation, computer systems, including peripheral devices, computer networks, or electronic devices owned or operated by a governmental or private entity or person;*

*(g) uses or changes in any way another person's computer credentials without the person's permission; or*

*(h) uses another person's computer or computer credentials to track that person's movements or monitor that person's communications without that person's consent.*

(2) A person convicted of the offense of unlawful use of a computer involving *loss of* property not exceeding $1,500 in value *or when no loss can be articulated* shall be fined not to exceed $1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving *loss of* property exceeding $1,500 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

*(3) A person is not in violation of this section if the person encrypts or modifies another person's computer, computer system, electronic device, or computer credentials without permission or consent for the purposes of complying with a court order or a warrant from federal, state, or local law enforcement.*

*(4) This section does not apply to an individual who modifies, accesses, or destroys the individual's personal computer, computer network, computer system, or electronic device.*

*(5) A person may not:*

*(a) encrypt or modify another person's computer, computer system, or electronic device;*

*(b) restrict access to personal data by any means; or*

*(c) restrict access to a product or service because the consumer did not authorize the use or collection of data.*

*(6) Except as provided in subsection (5) and (7), a person may enforce the terms of a legal contract between the persons.*

*(7) A person may only enforce nonpayment under the terms of a legal contract concerning digital software through modification of credentials.*"

Approved April 25, 2023

# CHAPTER NO. 248

[HB 188]

AN ACT MODIFYING FUNDING TO THE COAL BOARD; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-35-108, MCA, is amended to read:

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

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

(2) The amount of 12% of coal severance tax collections is allocated to the major repair long-range building program account established in 17-7-221.

(3) The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

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

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

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

(9) The amount of 5.8% ~~through June 30, 2023, and beginning July 1, 2023, the amount of 2.9%~~ must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) (a) Subject to subsection (11)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

(i) to the department of agriculture:

(A) $65,000 for the cooperative development center;

(B) $900,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(C) $600,000 for the Montana food and agricultural development program provided for in Title 80, chapter 11;

(ii) to the department of commerce:

(A) $325,000 for a small business development center;

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

(C) $625,000 for certified regional development corporations;

(D) $500,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2027--secs. 13, 15, 18, Ch. 343, L. 2019.)

**15-35-108. (Effective July 1, 2027) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

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

(2) The amount of 12% of coal severance tax collections is allocated to the major repair long-range building program account established in 17-7-221.

(3) The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

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

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

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

(9) The amount of *5.8%*~~2.9%~~ must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

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

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

Approved April 25, 2023

# CHAPTER NO. 249

[HB 210]

AN ACT REQUIRING A STATE AGENCY THAT RENDERS SERVICES TO ANOTHER STATE AGENCY TO INVOICE THE OTHER STATE AGENCY WITHIN 60 DAYS OF RENDERING SERVICES; REQUIRING THE INVOICED AGENCY TO PAY THE INVOICE WITHIN 60 DAYS OR BY THE CURRENT STATE FISCAL YEAREND, WHICHEVER OCCURS FIRST; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Agency recovery of costs for services rendered -- invoice -- payment deadline -- interest.** (1) A state agency rendering services to another state agency shall invoice the other state agency within 60 days of rendering services.

(2) An invoiced state agency shall pay the another state agency's invoice in full within the time specified in a written agreement between the agencies, or within 60 days of receipt of a properly completed invoice or by the end of the state fiscal yearend, whichever occurs first.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to [section 1].

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

Approved April 25, 2023

# CHAPTER NO. 250

[HB 247]

AN ACT REVISING LAWS RELATING TO EXEMPTIONS CONCERNING THE BOARD OF REALTY REGULATION; PROVIDING THAT CERTAIN

DIGITAL MEDIA PLATFORMS ARE EXEMPT; AMENDING SECTIONS 37-51-103 AND 37-51-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-51-103, MCA, is amended to read:

"**37-51-103. Exemptions.** (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker, a real estate salesperson, or a property manager. The licensing provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to*:*

*(a)* a newspaper or other publication of general circulation*;* ~~or to~~

*(b)* a radio or television station engaged in the normal course of business*; or*

*(c) digital media platforms that host advertisements for the sale of real estate but otherwise do not engage in activity with respect to the advertisements for which a license as a real estate broker or a real estate salesperson is required.*

*A broker or salesperson who operates or is affiliated with a digital media platform that hosts advertisements for the sale of real property on the digital media platform but who otherwise does not engage in activity with respect to the advertisements for which a license as a real estate broker or real estate salesperson is required may not be considered to be representing or providing real estate broker or real estate salesperson services to any seller or landlord who posts property to the digital media platform.*"

**Section 2.** Section 37-51-321, MCA, is amended to read:

"**37-51-321. Unprofessional conduct -- sanction of license.** (1) The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection (1)(a).

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the licensee's possession when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) as a salesperson, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) unless exempted, paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker, a salesperson, or a property manager;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners;

(v) failing to disclose to all customers and clients, including owners and tenants, the licensee's contractual relationship while managing properties for owners; or

(w) failing to maintain continuous professional liability insurance coverage that meets the requirements of 37-51-325.

(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*:*

*(i)* 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*; or*

*(ii) hosting advertisements on a website under the control or apparent control of a broker or salesperson for which the advertisements are posted on the website by the owner or landlord of the property for sale or rent, as long as the broker or salesperson does not perform on behalf of the owner or landlord of the property any services for which a license as a broker or salesperson is required.*

(3) The license of a broker, salesperson, or property manager who violates this section may be sanctioned as provided in 37-1-312."

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

Approved April 25, 2023

# CHAPTER NO. 251

[HB 284]

AN ACT REVISING THE REVIEW AND APPROVAL OF ELECTRICITY SUPPLY RESOURCES; AMENDING SECTIONS 69-8-201 AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-8-201, MCA, is amended to read:

"**69-8-201. Public utility -- customer electricity supply service options and requirements -- exemption.** (1) (a) Except as provided in subsections (1)(b) and (1)(c), a retail customer that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts and that is not purchasing electricity supply service from a public utility on October 1, 2007, may not purchase electricity supply service from a public utility.

(b) A retail customer referred to in subsection (1)(a) may request electricity supply service from the public utility, and the public utility shall provide electricity supply service if the retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the public utility's other customers over the long term as determined by the commission.

(c) If a public utility provides electricity supply service to a retail customer as provided in subsection (1)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.

(2) (a) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts that is not purchasing electricity from a public utility on October 1, 2007, may continue to purchase electricity from an electricity supplier. The retail customer may subsequently purchase electricity from a public utility subject to commission rule or order, but the customer may not, at a later date, choose to purchase electricity from another source.

(b) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts and that is currently purchasing electricity from a public utility may not choose to purchase electricity from another source after October 1, 2007.

(3) Nothing in this section affects a retail customer's rights and obligations with respect to net metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled energy deliveries from nonutility suppliers, as may be provided for in law, commission rule or order, or a tariff approved by the public service commission or the federal energy regulatory commission.

(4) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104(2), 69-5-105 through 69-5-112, 69-8-402, *69-8-421,* and subsection (4)(b) of this section, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, is exempt from the requirements of this chapter.

(b) To the extent that a public utility described in subsection (4)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter before October 1, 2007, it is subject to the requirements of this chapter with respect to the service area of the acquired public utility."

**Section 2.** Section 69-8-421, MCA, is amended to read:

"**69-8-421. Approval of electricity supply resources.** (1) A public utility ~~that removed its generation assets from its rate base pursuant to this chapter prior to October 1, 2007,~~ may apply to the commission for approval of an electricity supply resource that:

(a) is not yet procured; and

(b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

(2) Within 45 days of the public utility's submission of an application for approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(3) The commission shall issue an order within 180 days of receipt of an adequate application for approval of a power purchase agreement from an existing generating resource unless it determines that extraordinary circumstances require additional time.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which approval would result in construction of a new electric generating resource. The commission may extend the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public meetings on the application for approval in accordance with 69-3-1205(2) at least 30 days after the issuance of the final air quality permit.

(c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the commission shall extend the time limit in order to comply with subsection (4)(b).

(d) The commission may extend the time limit for issuing an order for an additional 60 days following the meetings pursuant to subsection (4)(b).

(5) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement, if necessary, in accordance with 69-3-1207 prior to the public utility's submission of an application for approval.

(6) (a) The commission may approve or deny, in whole or in part, an application for approval of an electricity supply resource.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must include the following findings:

(i) approval, in whole or in part, is in the public interest; and

(ii) procurement of the electricity supply resource is consistent with the requirements and objectives in 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

(d) The commission order may include a provision for allowable generation assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to generate electricity.

(e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

(f) The commission order may include other findings that the commission determines are necessary.

(g) A commission order that denies approval must describe why the findings required in subsection (6)(c) could not be reached.

*(h) The commission order must approve or deny an initial cost finding, in whole or in part. Any additional costs in excess of the commission approved amount must be approved or denied, in whole or in part, in a subsequent proceeding.*

(7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201 and commission rules.

(10) The commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

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

Approved April 25, 2023

# CHAPTER NO. 252

[HB 298]

AN ACT REVISING LAWS RELATED TO THE BOARD OF VETERANS' AFFAIRS; REVISING THE BOARD'S SIZE AND STRUCTURE; DEFINING A QUORUM AS THREE VOTING MEMBERS; AMENDING SECTION 2-15-1205, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1205, MCA, is amended to read:

"**2-15-1205. Board of veterans' affairs -- composition -- quorum -- voting -- compensation -- allocation.** (1) There is a board of veterans' affairs.

(2) (a) The board consists of ~~20~~ *14* members. All members must be residents of this state. ~~Eleven~~ *Six* members are voting members, who must be confirmed by the senate, and ~~nine~~ *eight* members are nonvoting, ex officio members.

(b) The governor shall appoint ~~19~~ *13* members in a manner that provides for staggered terms. The members are:

(i) five regional representatives, who must be voting members and who must have been honorably discharged from service in the military forces of the United States. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.

~~(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;~~

~~(iii) one tribal member, who must be an honorably discharged veteran and who is a voting member;~~

~~(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.~~

~~(v) a representative of the office of state director of Indian affairs, who is a nonvoting member;~~

*(ii) a representative of the office of state director of Indian affairs, who is a nonvoting member;*

~~(vi)~~*(iii)* a representative from the department of public health and human services, who is a nonvoting member;

~~(vii)~~*(iv)* a representative of the United States department of veterans affairs, who is a nonvoting member;

~~(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;~~

~~(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;~~

~~(x)~~*(v)* ~~three~~ *four* members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

~~(xi)~~*(vi)* the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board must be filled by the governor, subject to the conditions of subsection (2).

(4) A quorum is ~~six~~ *three* voting members.

(5) A vote resulting in a tie is the same as a negative vote.

(6) Each voting member must receive meals, lodging, and travel expenses as provided for in 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.

(7) The board shall meet at least three times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

(8) Each voting member may serve for a maximum of two terms. Each term is for 4 years.

(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a)."

**Section 2. Transition.** (1) The 20-member board of veterans' affairs, established in 2-15-1205, must become the 13-member board of veterans' affairs, established in [section 1], on [the effective date of this act].

(2) Within 60 days of [the effective date of this act], the governor shall appoint 13 board members who fulfill the requirements of [section 1] according to the following schedule in order to create 4-year staggered terms:

(a) seven members who shall serve a term that ends on August 1, 2025; and

(b) six members who shall serve a term that ends on August 1, 2027.

(3) The governor may appoint an individual who previously served as a board member before [the effective date of this act] to a term provided for in subsection (2) or (4) subject to term limitations provided for in [section 1].

(4) After the expiration of a term provided for in subsection (2), the governor shall appoint a person to serve a full 4-year term as provided in [section 1]. A member who previously served an abbreviated term may be reappointed for a full 4-year term subject to term limitations provided in [section 1].

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

Approved April 25, 2023

# CHAPTER NO. 253

[HB 327]

AN ACT REVISING ALLOWED USES OF THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT; AMENDING SECTION 7-14-112, MCA.

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

**Section 1.** Section 7-14-112, MCA, is amended to read:

"**7-14-112. Senior citizen and persons with disabilities transportation services account -- use.** (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to 15-68-820(2).

(2) The account must be used to provide operating funds, ~~or~~ matching funds for operating grants*, or matching funds for capital grants* pursuant to 49 U.S.C. 5311 to counties, incorporated cities and towns, tribal governments, urban transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, tribal governments, urban transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated

city or town, tribal government, urban transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area; and

(iii) the coordination of services as required in subsection (4).

(4) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include participation in a local transportation advisory committee;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region by creating a locally developed transportation coordination plan;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (4)(b) through (4)(f)."

Approved April 25, 2023

# CHAPTER NO. 254

[HB 331]

AN ACT GENERALLY REVISING OFF-HIGHWAY VEHICLE GRANT FUNDING LAWS; REQUIRING 10% OF MONEY DEPOSITED IN THE OFF-HIGHWAY VEHICLE ACCOUNT TO BE USED TO REPAIR AREAS IMPACTED OR DAMAGED BY OFF-HIGHWAY VEHICLES; REVISING DISTRIBUTION FOR GRANT AWARDS; AMENDING SECTION 23-2-825, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 23-2-825, MCA, is amended to read:

"**23-2-825. Off-highway vehicle grant program.** (1) Money deposited in the off-highway vehicle account pursuant to 60-3-201 must be used by the department of fish, wildlife, and parks to administer an off-highway vehicle grant program to develop and maintain facilities open to the general public, to repair areas that are *impacted or* damaged by off-highway vehicles, and to promote off-highway vehicle safety.

(2) Ten percent of the money deposited in the account must be granted for the promotion of off-highway vehicle safety.

(3) ~~Up to 10%~~ *Ten percent* of the money deposited in the account may be used to repair areas that are *impacted or* damaged by off-highway vehicles.

(4) The department may require an applicant to provide a 10% match in cash or donated services to be eligible to receive a grant.

(5) After awarding a grant pursuant to this section, the department shall, ~~distribute~~ *on request of the grantee, make an initial distribution of* 50% of the funding to the entity receiving the award ~~with the other 50% to be distributed upon receipt by the department of expense receipts and proof of completion of the project for which the money is awarded~~*, a distribution of 40% on receipt by the department of expense receipts, and a distribution of the final 10% of the funding on receipt by the department of proof of completion of the project for which the money is awarded.*

*(6) Entities may use grant funds to acquire various hand tools and chain saws needed to accomplish trail maintenance. The grantee shall provide to the department on request an itemized list and receipts for all purchases of hand tools and chain saws made using grant funds.*

*(7) Entities receiving a grant may use up to 7% of the funds for administrative costs.*"

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

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

Approved April 25, 2023

# CHAPTER NO. 255

[HB 335]

AN ACT REVISING ABSENTEE BALLOT LIST PROCEDURES; PROHIBITING VOTERS ON THE INACTIVE LIST FROM BEING MAILED AN ABSENTEE BALLOT; REQUIRING THAT CERTAIN NOTICES BE SENT BEFORE AN ABSENTEE VOTER IS PLACED ON THE INACTIVE LIST AFTER THE VOTER'S BALLOT IS RETURNED AS UNDELIVERABLE; AMENDING SECTIONS 13-13-212 AND 13-13-245, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 13-13-212, MCA, is amended to read:

"**13-13-212. Application for absentee ballot -- special provisions -- absentee ballot list for subsequent elections.** (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from a uniformed-service voter may apply for an absentee ballot for that election on behalf of the uniformed-service voter. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the absentee election board or by an authorized election official at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under subsection (2)(a) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) ~~An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.~~ *An elector may, at any time, request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote, as long as the elector remains qualified to vote and remains at the address provided in the initial absentee ballot application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.*

(4) (a) An elector *on the active list* who has requested to be on the absentee ballot list and who has not filed a change of address with the U.S. postal service must continue to receive an absentee ballot for each subsequent election.

(b) (i) The election administrator shall biennially mail a forwardable address confirmation form to each elector who is listed in the national change of address system of the U.S. postal service as having changed the elector's address.

(ii) The address confirmation form must request the elector's driver's license number or the last four digits of the elector's social security number. The address confirmation form must include an e-mail address for the election administrator that can be used by the elector to confirm that the elector wishes to continue to receive an absentee ballot and to provide the requested information. The address confirmation form must be mailed in January of every even-numbered year. The address confirmation form is for elections to be held between February 1 following the mailing through January of the next even-numbered year.

(iii) An election administrator may provide a website on which the elector can provide the required information to confirm that the elector wishes to remain on the absentee ballot list.

(iv) If the elector is providing confirmation using the address confirmation form, the elector shall sign the form, indicate the address to which the absentee ballot should be sent, provide the elector's driver's license number or the last four digits of the elector's social security number, and return the form to the election administrator.

(v) The elector may provide the required information to the election administrator using:

(A) the e-mail address provided on the form; or

(B) a website established by the election administrator.

(vi) The elector does not need to provide a signature when using either option provided in subsection (4)(b)(v) to confirm that the elector wishes to remain on the absentee ballot list.

(vii) If the form is not completed and returned or if the elector does not respond using the options provided in subsection (4)(b)(v), the election administrator shall remove the elector from the absentee ballot list.

(c) An elector may request to be removed from the absentee ballot list for subsequent elections by notifying the election administrator in writing.

(d) An elector who has been or who requests to be removed from the absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(5) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in this section.

*(6) An elector on the inactive voter list may not receive a ballot until the elector reactivates the elector's registration as provided in 13-2-222.*"

**Section 2.** Section 13-13-245, MCA, is amended to read:

"**13-13-245. Notice to elector -- opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's absentee ballot application or signature envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator determines that:

(a) the elector's ballot is to be handled as a provisional ballot;

(b) the validity of the ballot is in question; or

(c) the election administrator has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail, facsimile, electronic means, or in person, resolve the issue that resulted in the ballot being handled as a provisional ballot, confirm the validity of the ballot, or verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration form containing the elector's current signature, or by providing a new agent designation form; or

(b) if necessary, request and receive a replacement ballot pursuant to 13-13-204.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If ~~a~~ *an absentee* ballot is returned as undeliverable, the election administrator shall ~~investigate the reason for the return~~ *attempt to contact the elector by the most expedient means available to determine the reason for the return and mail a confirmation notice if the elector cannot be contacted otherwise. The notice must be sent by forwardable mail with a postage-paid, return-addressed reply.*

*(b) If the confirmation notice is returned to the election administrator, after the election the election administrator shall place the elector on the inactive list provided for in 13-2-220 until the elector reactivates the elector's registration pursuant to 13-2-222.*

~~(b)~~*(c) (i)* ~~An~~ *During the election, the* elector must be provided with:

~~(i)~~*(A)* the elector's undeliverable ballot upon notification *in writing* by the elector of the elector's correct mailing address; or

~~(ii)~~*(B)* a replacement ballot if a request has been made pursuant to 13-13-204.

*(ii) An elector who votes in the election pursuant to this subsection (4)(c) may not be placed on the inactive list pursuant to the procedures provided in subsection (4)(b).*"

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

Approved April 25, 2023

# CHAPTER NO. 256

[HB 361]

AN ACT REVISING LAWS REGARDING DISCRIMINATORY PRACTICES IN EDUCATION; PROVIDING THAT IT IS NOT A DISCRIMINATORY PRACTICE FOR A STUDENT TO CALL A STUDENT BY THE STUDENT'S LEGAL NAME OR REFERENCE THE STUDENT BY THE STUDENT'S SEX; AMENDING SECTION 49-2-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Certain district policies prohibited.** The trustees of a school district may not adopt a policy that subjects a student to disciplinary action for behavior that is not considered an unlawful discriminatory practice pursuant to 49-2-307(2), if the behavior does not rise to the definition of bullying as provided in 20-5-208.

**Section 2.** Section 49-2-307, MCA, is amended to read:

"**49-2-307. Discrimination in education.** *(1)* It is an unlawful discriminatory practice for an educational institution:

~~(1)~~*(a)* to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

~~(2)~~*(b)* to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin of an applicant for admission, except as permitted by regulations of the commission;

~~(3)~~*(c)* to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, marital status, or national origin of an applicant for admission; or

~~(4)~~*(d)* to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin.

*(2) For the purposes of this section, it is not an unlawful discriminatory practice for a student to:*

*(a) call another student by the student's legal name; or*

*(b) refer to another student by the student's sex.*"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2023

# CHAPTER NO. 257

[HB 371]

AN ACT REVISING THE BANK ACT TO ALLOW A BANK TO OWN RESIDENTIAL REAL PROPERTY FOR THE PURPOSE OF PROVIDING HOUSING ACCOMMODATIONS FOR ITS EMPLOYEES; AND AMENDING SECTION 32-1-423, MCA.

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

**Section 1.** Section 32-1-423, MCA, is amended to read:

"**32-1-423. Real estate that banks may purchase, hold, or convey.** (1) (a) *Except as provided in subsection (3),* ~~A~~ *a* bank organized under the provisions of this chapter may purchase, hold, or convey real estate that:

(i) is for its accommodation in the transaction of its business, but it may not invest an amount exceeding 100% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business if property held for future use as a bank office site is held pursuant to a detailed written business plan formally adopted by the directors of the bank;

(ii) is mortgaged to it in good faith by way of security for loans previously made or money due to the bank;

(iii) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(iv) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(b) The detailed written business plan required by subsection (1)(a)(i) must include information outlining the manner in which the acquired real estate will be developed for future use as a bank office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures. The plan must include sufficient information for the department to determine that the property will be used for a future bank office site.

(2) Real estate acquired in the manner set forth in subsections (1)(a)(iii) and (1)(a)(iv) may not be held longer than 5 years from the date of acquisition, unless special written permission is granted by the department. The real estate must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

*(3) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate that is residential and used for the exclusive purpose of providing housing accommodations for its employees. Residential real estate that is purchased, held, or conveyed as provided in this subsection is not subject to subsections (1) and (2).*"

Approved April 25, 2023

# CHAPTER NO. 258

[HB 374]

AN ACT REVISING MOTOR VEHICLE LAWS; CREATING THE OFFENSE OF FAILURE TO YIELD TO AN EMERGENCY VEHICLE; PROVIDING A PENALTY; AND AMENDING SECTIONS 61-8-346 AND 61-8-715, MCA.

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

**Section 1.** Section 61-8-346, MCA, is amended to read:

"**61-8-346. Operation of vehicles on approach of authorized emergency vehicles or law enforcement vehicles -- approaching stationary emergency vehicles or law enforcement vehicles -- reckless endangerment of emergency personnel.** (1) Upon the approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a law enforcement vehicle properly and lawfully making use of an audible signal only, the operator of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of an authorized emergency vehicle or law enforcement vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) On approaching and passing a stationary authorized emergency vehicle, law enforcement vehicle, or tow truck that is displaying visible signals of flashing or rotating amber, blue, red, or green lights or any temporary sign advising of an emergency scene or accident ahead, the operator of the approaching vehicle shall:

(a) cautiously and in a careful manner reduce the vehicle's speed to a reasonably lower and safe speed appropriate to the road and visual conditions or to the temporarily posted speed limit, but to a careful and prudent speed if a temporarily posted speed has not been posted;

(b) proceed with caution; and

(c) if possible considering safety and traffic conditions:

(i) move to a lane that is not adjacent to the lane in which the authorized emergency vehicle, law enforcement vehicle, or tow truck is located;

(ii) move as far away from the authorized emergency vehicle, law enforcement vehicle, or tow truck as possible; or

(iii) follow flagger instructions or instructions on sign boards.

(4) *(a) An operator of a vehicle who violates subsection (1) commits the offense of failure to yield to an emergency vehicle and is subject to the penalties provided in 61-8-715(3).*

*(b)* An operator of a vehicle who violates subsection (3) commits the offense of reckless endangerment of emergency personnel *and is subject to the penalties provided in 61-8-715(1) or (2).*"

**Section 2.** Section 61-8-715, MCA, is amended to read:

"**61-8-715. Reckless driving -- reckless endangerment of highway workers -- reckless endangerment of emergency personnel -- *failure to yield to an emergency vehicle* -- penalty.** (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b), convicted of reckless endangerment of a highway worker under 61-8-301(4), or convicted of reckless endangerment of emergency personnel under 61-8-346 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, a fine of not less than $100 or more than $500, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, a fine of not less than $500 or more than $1,000, or both.

(2) A person who is convicted of reckless driving under 61-8-301 or convicted of reckless endangerment of emergency personnel under 61-8-346 and whose offense results in the death or serious bodily injury of another person shall be

punished by a fine in an amount not exceeding $10,000, incarceration for a term not to exceed 1 year, or both.

*(3) A person who is convicted of failure to yield to an emergency vehicle under 61-8-346 shall be punished as follows:*

*(a) for a first conviction, a fine of not less than $500 or more than $1,000, a sentence of community service of not less than 50 hours or more than 100 hours, or both;*

*(b) for a second conviction, a fine of not less than $1,000 or more than $2,000, a sentence of community service of not less than 100 hours or more than 200 hours, or both; and*

*(c) for a third or subsequent conviction, a fine of not less than $3,000 or more than $5,000, a sentence of imprisonment for a term of not less than 30 days, or both.*"

Approved April 25, 2023

## CHAPTER NO. 259

[HB 379]

AN ACT CONTINUING THE PROHIBITION THAT PREVENTS A PHARMACY BENEFIT MANAGER FROM REQUIRING FEDERALLY CERTIFIED HEALTH ENTITIES TO IDENTIFY 340B DRUGS; EXTENDING THE TERMINATION DATE OF THE PROHIBITION; AMENDING SECTION 26, CHAPTER 501, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 26, Chapter 501, Laws of 2021, is amended to read:

**"Section 26. Termination.** [Section 10(3)] terminates June 1, ~~2023~~ *2025*."

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

Approved April 25, 2023

## CHAPTER NO. 260

[HB 384]

AN ACT REVISING WHEN A CANDIDATE OR COMMITTEE MAY PROVIDE CAMPAIGN FINANCE REPORTS IN HARD COPY; CLARIFYING THAT A CANDIDATE WHO TIMELY FILES A REPORT IN HARD COPY MAY NOT BE REMOVED FROM THE BALLOT; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO PROVIDE CERTAIN FORMS; AND AMENDING SECTION 13-37-225, MCA.

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

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

"**13-37-225. Reports of contributions and expenditures required -- electronic filing and publication.** (1) (a) Except as provided in 13-37-206 *and subsections (1)(b) and (1)(c)*, each candidate, political committee, and joint fundraising committee shall file with the commissioner periodic electronic reports of contributions and expenditures made by or on the behalf of a candidate, political committee, or joint fundraising committee.

(b) The commissioner may, for good cause shown in a written application by a candidate, political committee, or joint fundraising committee grant a waiver to the requirement that reports be filed electronically.

*(c) (i) If a candidate or treasurer for a political committee or a joint fundraising committee experiences technical difficulties with the electronic report filing system, the candidate or treasurer may file by fax or e-mail the same information in hard copy with the commissioner that would otherwise be required by subsection (1)(a) to be filed electronically. Within 3 days of filing the required information in hard copy, the candidate or treasurer shall file the information electronically.*

*(ii) A filing made pursuant to subsection (1)(c)(i) must be considered the same as an electronic submission. The commissioner may not include a candidate in the notification to the secretary of state required by 13-37-126(3) if the candidate meets the requirements of subsection (1)(c)(i).*

*(d) To facilitate the implementation of subsection (1)(c), the commissioner shall provide an interactive document that can be filled out by the candidate or treasurer and printed, e-mailed, or faxed.*

(2) The commissioner shall post on the commissioner's website:

(a) all reports filed under 13-37-226 within 7 business days of filing; and

(b) for each election, the calendar dates that correspond with the filing requirements of 13-37-226.

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

(4) A person who makes an election communication, electioneering communication, or independent expenditure is subject to reporting and disclosure requirements as provided in chapters 35 and 37 of this title."

Approved April 25, 2023

# CHAPTER NO. 261

[HB 387]

AN ACT REVISING CONSTITUENT ACCOUNT LAWS; REAFFIRMING THAT MONEY IN A CONSTITUENT ACCOUNT MAY NOT BE USED FOR CAMPAIGN EXPENDITURES; ALLOWING A HOLDER TO MAKE EXPENDITURES FROM A CONSTITUENT ACCOUNT WHILE THE HOLDER HAS AN OPEN CAMPAIGN ACCOUNT; AMENDING SECTION 13-37-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-37-402, MCA, is amended to read:

"**13-37-402. Constituent accounts -- reports.** (1) A constituent services account may be established to pay for constituent services by a successful candidate required to report under 13-37-229. A constituent services account may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate may deposit only surplus campaign funds in a constituent services account.

(b) The money in the account may be used only for constituent services. The money in the account may not be used for*:*

*(i)* personal benefit*; or*

*(ii) campaign expenditures authorized pursuant to Title 13, chapter 37, part 2.* ~~Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.~~

(3) A person described in subsection (1) may not establish any account related to the public official's office other than a constituent services account. This subsection does not prohibit a person from establishing a campaign account.

(4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate required to report under 13-37-229. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office."

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

Approved April 25, 2023

# CHAPTER NO. 262

[HB 392]

AN ACT REVISING LAWS RELATED TO DIRECT-ENTRY MIDWIVES; EXPANDING THE ABILITY FOR DIRECT-ENTRY MIDWIVES TO OBTAIN AND ADMINISTER CERTAIN PRESCRIPTION DRUGS; REQUIRING CERTAIN EDUCATION PRIOR TO THE ABILITY FOR DIRECT-ENTRY MIDWIVES TO ADMINISTER DRUGS; REQUIRING DIRECT-ENTRY MIDWIVES TO ESTABLISH PROTOCOLS FOR DRUG ADMINISTRATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 37-27-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-27-302, MCA, is amended to read:

"**37-27-302. Administration of prescription drugs -- *when* prohibited -- exceptions *when allowed -- protocols -- rulemaking.*** *(1)* ~~A~~ *Except as provided in subsections (2) and (3), a* licensed direct-entry midwife may not dispense or administer prescription drugs ~~other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with administrative rules adopted by the department of public health and human services, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician~~.

*(2) A licensed direct-entry midwife who has successfully completed accredited courses in pharmacology and intravenous therapy approved by the board and has obtained a license endorsement from the board may, during the practice of midwifery, directly obtain and administer the following:*

*(a) oxygen;*

*(b) postpartum antihemorrhagic agents, including:*

*(i) pitocin (intramuscular);*

*(ii) methylergonovine;*

*(iii) misoprostol;*

*(iv) tranexamic acid; and*

*(v) other postpartum antihemorrhagic drugs allowed by board rule;*

*(c) injectable local anesthetics for the repair of up to second-degree lacerations;*

*(d) antibiotics for group b streptococcus prophylaxis consistent with guidelines of the United States centers for disease control and prevention;*

*(e) epinephrine administered for anaphylactic shock;*

*(f) intravenous fluids for fluid replacement and administration of approved medications;*

*(g) rho(d) immune globulin to prevent maternal immune sensitization to certain fetal blood types;*

*(h) newborn vitamin K or phytonadione (oral or intramuscular preparations);*

*(i) in accordance with administrative rules adopted by the department of public health and human services, prophylactic eye agents to newborn infants; and*

*(j) other medications as prescribed by a medical practitioner or naturopathic physician, including the use of devices as defined in 37-2-101.*

*(3) A licensed direct-entry midwife who has successfully completed accredited courses in pharmacology pursuant to subsection (2) may, during the practice of midwifery:*

*(a) directly obtain terbutaline; and*

*(b) administer terbutaline to a patient when given a direct order to do so from a licensed physician.*

*(4) A licensed direct-entry midwife who administers drugs under this section must establish written protocol, including but not limited to:*

*(a) procurement of prescription drugs, which must be procured from a wholesale drug distributor or pharmacy supplier licensed by the board of pharmacy provided for in 2-15-1733;*

*(b) storage, inventory control, and disposal of prescription drugs; and*

*(c) use and care of prescription drugs.*

*(5) The board may adopt rules to implement this section.*"

Approved April 25, 2023

# CHAPTER NO. 263

[HB 410]

AN ACT ESTABLISHING A TIME LIMIT FOR SERVICE OF PROCESS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time limit for service of process.** Except as provided in 25-3-106, a plaintiff shall make service of process no later than 2 years after filing the complaint. If the plaintiff fails to do so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant has made an appearance.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 25, chapter 3, part 1, and the provisions of Title 25, chapter 3, part 1, apply to [section 1].

Approved April 25, 2023

# CHAPTER NO. 264

[HB 427]

AN ACT REVISING MILITARY AFFAIRS LAWS; PROVIDING THAT MEMBERS OF THE NATIONAL GUARD AND AIR NATIONAL GUARD ARE ENTITLED TO WORKERS' COMPENSATION WHILE ON STATE DUTY; PROVIDING THAT THE DEPARTMENT OF MILITARY AFFAIRS MUST COVER THE DIFFERENCE BETWEEN WORKERS' COMPENSATION BENEFITS AND THE INJURED MEMBER'S FEDERAL COMPENSATION RATE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 10-3-312 AND 39-71-118, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Benefits for national guard performing state military duty.** (1) A member of the army national guard or air national guard who suffers a covered injury or illness while serving on state military duty, as defined in 10-1-1003, is entitled to worker's compensation in the same manner as any other employee of the state.

(2) A member of the army national guard or air national guard who, as a result of an injury suffered while serving on state military duty, is temporarily unable to return to the civilian trade or business performed immediately before entering state military duty is entitled to a monthly payment from the department in an amount that is equivalent to the difference between the gross workers' compensation benefits received for the injury and the pay and allowances of the member provided by 10-1-502. Entitlement to this payment is personal to the member and terminates upon termination of workers' compensation benefits.

(3) A member of the army national guard or air national guard who, as a result of an injury suffered while serving on state military duty, is permanently disabled is entitled to a monthly payment from the department in an amount equal to the difference between the gross workers' compensation benefits received for the injury and the amount that would be paid to a similarly situated member of the armed forces of the United States for the same injury if it was incurred in the line of duty.

(4) A member of the army national guard or air national guard is not entitled to any benefits under this section unless the injury or illness occured while serving on state military duty. For the purpose of this section, whether an injury or illness occured while serving on state military duty as a member of the army national guard or air national guard must be determined using the regulations, policies, and procedures prescribed by the federal military services.

(5) Nothing in this section may be construed to prejudice or limit the provision of any other rights or benefits to which the injured member is entitled. The benefits authorized by this section are in addition to any workers' compensation benefits to which a member of the army national guard or air national guard would otherwise be entitled.

(6) The department may use funds appropriated under 10-3-312 to pay benefits provided under this section.

(7) The department may adopt rules necessary to implementing this section.

**Section 2.** Section 10-3-312, MCA, is amended to read:

"**10-3-312. Maximum expenditure by governor -- appropriation.** (1) Whenever a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under

80-7-1013, is declared by the governor, *or a member of the army national guard or air national guard is entitled to benefits under [section 1],* there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individuals and households grant programs as provided in 42 U.S.C. 5174. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(4) At the end of each biennium, an amount equal to the unexpended and unencumbered balance of the $16 million statutory appropriation in subsection (1), minus any amount appropriated pursuant to 10-3-310 in the same biennium, must be transferred by the state treasurer from the state general fund to the fire suppression account provided for in 76-13-150."

**Section 3.** Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care provider defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (7), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether

or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving cash assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d)~~.~~*; and*

*(j) a member of the army national guard or air national guard while performing state military duty as defined in 10-1-1003.*

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-33-4510.

(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm,

limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) (a) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.

(b) An elementary or secondary student who is not paid wages by the business partner or the educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The business partner and the educational institution shall mutually determine and agree in writing whether the business partner or the educational institution shall elect coverage for the student.

(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency care providers for premium and weekly benefit purposes based on the number of volunteer hours of each emergency care provider, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency care provider, a member may instead of the benefits described in subsection (10)(b) be eligible

for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency care provider who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency care providers under the provisions of this section shall annually notify its volunteer emergency care providers that coverage is not provided.

(f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency care provider who serves an employer as defined in 7-33-4510.

(g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

(11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [section 1].

Approved April 25, 2023

# CHAPTER NO. 265

[HB 438]

AN ACT REVISING LAWS RELATED TO PUBLIC ACCESS LAND AGREEMENT APPLICATIONS; REMOVING THE FEE TO PROPOSE A PUBLIC ACCESS LAND AGREEMENT; AMENDING SECTION 87-1-295, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-295, MCA, is amended to read:

"**87-1-295. Public access land agreement -- terms -- application fee.** (1) A public access land agreement may be granted only to a landowner who is providing access across the landowner's land to public land that is leased by the landowner or to public land for which there is no leaseholder. An agreement may not include land for which the landowner is also compensated pursuant to 76-17-102 or 87-1-294.

(2) The department ~~shall~~ *may* negotiate the terms of a proposed public access land agreement with the landowner. Negotiable terms include:

(a) the amount of compensation, not to exceed $15,000 annually, and the duration of the agreement;

(b) improvements to the land provided by the department that may facilitate public access;

(c) the location of the access and the transportation mode by which the public may use the access;

(d) time periods when the access may and may not be used; and

(e) penalties for trespassing on private land not covered by the agreement.

(3) The private land/public wildlife advisory committee appointed pursuant to 87-1-269 shall review proposed public access land agreements and make recommendations to the department. The department shall consider the recommendations when issuing agreements.

(4) The department may revoke a public access land agreement for a violation of the terms of the agreement.

(5) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who holds a public access land agreement.

~~(6) (a) A landowner who proposes a public access land agreement to the department shall pay a $5 application fee.~~

~~(b) All application fees must be deposited in the department's general license account and used for the purpose of establishing public access land agreements. At the end of each fiscal year, application revenue that remains unobligated is available to the department for any purpose pursuant to 87-1-201(3).~~

~~(7)~~*(6)* The department may adopt rules to implement the provisions of this section."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2023

# CHAPTER NO. 266

[HB 450]

AN ACT PROVIDING THAT A STUDENT MAY USE REASONABLE AND NECESSARY PHYSICAL FORCE TO PROTECT THE STUDENT'S SELF OR ANOTHER PERSON IF PHYSICALLY ATTACKED; AMENDING SECTIONS 20-5-201 AND 20-5-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-201, MCA, is amended to read:

"**20-5-201. Duties and sanctions.** (1) A pupil:

(a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) shall pursue the required course of instruction;

(c) shall submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) is subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, or book belonging to the district, harms or threatens to harm another person or the person's property, or otherwise violates district policy regarding pupil conduct is subject to punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, the pupil's parent or

guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage. *This subsection does not apply to a pupil who is protecting the pupil's self or another person as provided in 20-5-209.*

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice from the district that initiated the decision that the decision has been rescinded under the terms of subsection (4)(a)."

**Section 2.** Section 20-5-209, MCA, is amended to read:

"**20-5-209. Bullying of student prohibited -- *self-defense authorized.*** *(1)* Bullying of a student enrolled in a public K-12 school by another student or an employee is prohibited.

*(2) A student who is physically attacked is entitled to use physical force that is reasonable and necessary for self-protection.*

*(3) A student who witnesses another person being physically attacked is entitled to use reasonable and necessary physical restraint, defined as the placing of hands on another in a manner that is reasonable or necessary to protect the person from physical harm.*

*(4) A school district shall investigate a student's use of physical force and may not reprimand or discipline a student who is found through the investigation to have more likely than not used physical force for self-protection or in protection of another pursuant to subsection (3).*"

**Section 3. Effective date.** [This act] is effective July 1, 2023.

Approved April 25, 2023

# CHAPTER NO. 267

[HB 456]

AN ACT PROVIDING A FREE SUPER TAG CHANCE TO EACH MONTANA RESIDENT WHO PURCHASES A DEER OR ELK LICENSE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 87-2-702, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Annual lottery of hunting licenses -- residents only.** (1) For each deer or elk general license purchased by a resident, as defined in 87-2-102, the department shall award the resident one free chance in the lottery established by this section.

(2) The commission may issue one license each license year for one of the following:

(a) shiras moose;

(b) mountain sheep; or

(c) mountain goat.

(3) (a) 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.

(b) Residents participating in the lottery pursuant to this section may also participate in the lottery established in 87-1-271.

(4) 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 rotation between the three species each year.

**Section 2.** Section 87-2-702, MCA, is amended to read:

"**87-2-702. Restrictions on special licenses -- availability of bear and mountain lion 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) Except as provided in 87-2-815, a person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), *[section 1],* and 87-2-815, a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104, 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) (i) Except as provided in 87-1-271(2) and 87-2-815, a person who takes a legal ram mountain sheep with at least one horn that is equal to or greater than a three-fourths curl using an unlimited mountain sheep license or a population management license issued pursuant to 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)[(i)], "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

[(ii) The department shall biennially report to the environmental quality council in accordance with 5-11-210 information on:

(A) mountain sheep harvested pursuant to this subsection (4) from the Tendoy Mountain herd;

(B) efforts to collect tissue samples and other biological information from mountain sheep harvested from the Tendoy Mountain herd to determine the immunity of surviving herd members to pneumonia outbreaks; and

(C) attempts by the department to share tissue samples and other biological information collected from the Tendoy Mountain herd with Washington State University, other public entities, and private entities that research the interaction between mountain sheep and domestic sheep.]

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep. (Bracketed language in subsection (4)(b) terminates July 1, 2027--sec. 3, Ch. 186, L. 2017.)."

**Section 3. 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 4. Effective date.** [This act] is effective March 1, 2024.

Approved April 25, 2023

# CHAPTER NO. 268

[HB 457]

AN ACT REVISING LAWS RELATED TO ASSAULT; PROVIDING THAT AN ASSAULT IS COMMITTED WHEN A PERSON PROVIDES CERTAIN DRUGS TO ANOTHER PERSON WITHOUT THEIR CONSENT; AND AMENDING SECTION 45-5-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-201, MCA, is amended to read:

"**45-5-201. Assault.** (1) A person commits the offense of assault if the person:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; ~~or~~

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another*; or*

*(e) purposely or knowingly provides an individual with rohypnol, flunitrazolam, or gamma-hydroxybutyrate without the individual's consent.*

(2) A person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Approved April 25, 2023

# CHAPTER NO. 269

[HB 465]

AN ACT AUTHORIZING THE USE OF CONSTRUCTION-RELATED FEES OR CHARGES THAT MAY BE IMPOSED BY A COUNTY, CITY, OR TOWN FOR ACTIVITIES IN SUPPORT OF THE ISSUANCE OF A BUILDING PERMIT; INCREASING THE RESERVE AMOUNT REQUIRED BEFORE CONSTRUCTION-RELATED FEES OR CHARGES MAY BE REDUCED; PROHIBITING THE DEPARTMENT OF LABOR AND INDUSTRY FROM CONDUCTING CERTAIN AUDITS OF A COUNTY, CITY, OR TOWN BUILDING CODE ENFORCEMENT PROGRAM EXCEPT AS PART OF A FINANCIAL AUDIT; AND AMENDING SECTIONS 50-60-106 AND 50-60-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-60-106, MCA, is amended to read:

"**50-60-106. Powers and duties of counties, cities, and towns.** (1) As allowed by Title 50, chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code enforcement program are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the state building code or county, city, or town building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A county, city, or town certified pursuant to 50-60-302, by action of its building official, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection (2)(d), the

phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and all work authorized by those permits has been fully approved by the building official having jurisdiction.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the county, city, or town are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for *activities in support of reviewing and issuing a building permit and for* building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for ~~12~~ *36* months. The excess must be placed in a reserve account and may be used only for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction; and

(b) prohibit the commencement of construction until a permit has been issued by the building code enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable provisions of the state building code or county, city, or town building code or other county, city, or town ordinance or resolution that pertains to the proposed construction. A county, city, or town subject to this subsection (3) may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

(4) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following conditions:

(a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.

(b) The inspections are not done in lieu of inspections by another county, city, or town that has jurisdiction over the buildings to be inspected.

(c) (i) The county, city, or town powers of enforcement possessed as a result of building code enforcement certification by the department may not be exercised in conjunction with the requested inspections.

(ii) Similar powers of building code enforcement may not be contractually created or required by the requester and the inspecting jurisdiction.

(5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative inspections of those buildings prior to annexation as a condition precedent to receiving any public services or utilities."

**Section 2.** Section 50-60-302, MCA, is amended to read:

"**50-60-302. Certification of county, city, or town building codes.** (1) A county, city, or town may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) *(a)* ~~The~~ *Subject to subsection (2)(b), the* department shall adopt additional rules and standards governing the certification of county, city, and town building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, city, or town a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, city, or town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, city, or town is located.

*(b)* The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed. *The rules may not require a financial audit or a review of fees of a county, city, or town code enforcement program that is in addition to or separate from an audit conducted under 2-7-503.*

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the county, city, or town area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the county, city, or town, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a county, city, or town voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The county, city, or town retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects

permitted by the county, city, or town prior to decertifying its code enforcement program."

Approved April 25, 2023

# CHAPTER NO. 270

[HB 489]

AN ACT REVISING TRANSPORTATION COMMISSION LAW; UPDATING THE NAME OF THE ROCKY MOUNTAIN TRIBAL LEADERS COUNCIL; AMENDING SECTION 2-15-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2502, MCA, is amended to read:

"**2-15-2502. Transportation commission.** (1) There is a transportation commission composed of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) Of the members appointed from districts 1, 3, 4, and 5, at least one must have specific knowledge of Indian culture and tribal transportation needs. The member provided for under this subsection must be selected by the governor after consultation with the Montana members of the ~~Montana-Wyoming~~ *Rocky Mountain* tribal leaders council.

(3) Two members may not be residents of the same district at the time of appointment or during their respective terms of office.

(4) Not more than three members may at the time of appointment or during their respective terms be members of the same political party.

(5) An elective state official or state officer, during the term of office to which elected or appointed, or a state employee may not be a member of the commission.

(6) A resolution, motion, or other decision of the commission may not be adopted or passed without the favorable vote of at least three members.

(7) The commission is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

(8) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

(9) The commission may adopt rules necessary for its government.

(10) The director of transportation or the director's designee shall act as liaison between the commission and the department."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2023

# CHAPTER NO. 271

[HB 493]

AN ACT GENERALLY REVISING CONSTITUENT SERVICES ACCOUNT LAWS; CHANGING THE ACCOUNT NAME TO CONTINUING SERVICE ACCOUNT; AMENDING SECTIONS 13-37-240 AND 13-37-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-240, MCA, is amended to read:

"**13-37-240. Surplus campaign funds.** (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. A successful candidate for a statewide elected or legislative office or for public service commissioner may establish a ~~constituent services account~~ *continuing service account* as provided in 13-37-402. The candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family."

**Section 2.** Section 13-37-402, MCA, is amended to read:

"**13-37-402. ~~Constituent~~ *Continuing service* accounts -- reports.** (1) A ~~constituent services account~~ *continuing service account* may be established to pay for constituent services by a successful candidate required to report under 13-37-229. A ~~constituent services account~~ *continuing service account* may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate may deposit only surplus campaign funds in a ~~constituent services account~~ *continuing service account*.

*(b) Any loans owed must be paid back, not forgiven, before a continuing service account may be created and funded.*

~~(b)~~*(c)* The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a ~~constituent services~~ *continuing service* account may not be made when the holder of the ~~constituent services~~ *continuing service* account also has an open campaign account.

(3) A person described in subsection (1) may not establish any account related to the public official's office other than a ~~constituent services account~~ *continuing service account*. This subsection does not prohibit a person from establishing a campaign account.

(4) The holder of a ~~constituent services account~~ *continuing service account* shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate

required to report under 13-37-229. The report must be certified as provided in 13-37-231.

(5) The holder of a ~~constituent services account~~ *continuing service account* shall close the account within 120 days after the account holder leaves public office."

**Section 3. Effective date.** [This act] is effective July 1, 2023.

Approved April 25, 2023

# CHAPTER NO. 272

[SB 109]

AN ACT REVISING PUBLIC SERVICE COMMISSION DISTRICTS; CREATING PROCEDURES FOR COMMISSION DISTRICT ADJUSTMENT; AMENDING SECTION 69-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-1-104, MCA, is amended to read:

"**69-1-104. Public service commission districts.** *(1)* In this state there are five public service commission districts, with one commissioner elected from each district~~:~~. *Districts are based on the house districts submitted as part of the redistricting plan to the secretary of state pursuant to Article V, section 14, of the Montana constitution. The house districts are* distributed as follows:

~~(1) first district: Blaine, Cascade, Chouteau, Daniels, Dawson, Fergus, Garfield, Hill, Judith Basin, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;~~

~~(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Treasure, and Yellowstone Counties;~~

~~(3) third district: Beaverhead, Broadwater, Deer Lodge, Gallatin, Golden Valley, Jefferson, Madison, Meagher, Musselshell, Park, Silver Bow, Stillwater, Sweet Grass, and Wheatland Counties;~~

~~(4) fourth district: Granite, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties;~~

~~(5) fifth district: Flathead, Glacier, Lake, Lewis and Clark, Pondera, and Teton Counties.~~

*(a) first district: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 43, 44, 45;*

*(b) second district: 39, 40, 41, 42, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62;*

*(c) third district: 37, 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 85, 86;*

*(d) fourth district: 1, 2, 6, 8, 9, 10, 12, 13, 14, 87, 88, 89, 90, 93, 94, 95, 96, 97, 98, 100; and*

*(e) fifth district: 3, 4, 5, 7, 11, 15, 16, 17, 18, 24, 25, 76, 80, 81, 82, 83, 84, 91, 92, 99.*

*(2) During a legislative session and following the receipt of the latest official final decennial census data, the legislature:*

*(a) shall evaluate existing commission districts;*

*(b) may adjust commission boundaries to comply with the United States constitution;*

*(c) shall prepare and adopt a final commission district map; and*

*(d) shall file the final commission district map with the secretary of state.*"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 273

[SB 218]

AN ACT REVISING LAWS RELATED TO CIVIL SETTLEMENTS; AND PROVIDING THAT A PARTY TO A SETTLEMENT MAY NOT DEMAND THAT DAMAGES BE CLASSIFIED IN A CERTAIN CATEGORY OF DAMAGES UNLESS THE PARTIES AGREE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Compromise and settlement of civil claims -- negotiation.** (1) Except as provided in subsection (2), a party in a settlement negotiation may not demand, as a condition of settlement, that the settlement proceeds are classified as a specific category of damage that does not accurately describe the specific damages at issue.

(2) The parties may stipulate that any damages may be classified as any category of damages. The stipulation must be included in the settlement agreement.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to [section 1].

Approved April 26, 2023

# CHAPTER NO. 274

[SB 224]

AN ACT ESTABLISHING A REPORTING REQUIREMENT FOR THE COURT ADMINISTRATOR RELATED TO DISTRICT COURT JUDGE CASE NUMBERS AND SUBSTITUTIONS; AND AMENDING SECTION 3-1-713, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-1-713, MCA, is amended to read:

"**3-1-713. Office of court administrator to report.** *(1)* Each quarter of the fiscal year, the office of court administrator shall report to the law and justice interim committee and the legislative finance committee on the number of civil cases that have been pending for more than 2 years by judicial district. The report must identify:

~~(1)~~*(a)* the judicial district;

~~(2)~~*(b)* the number of cases in that district that are pending for more than 2 years but less than 3 years;

~~(3)~~*(c)* the number of cases in that district that are pending for more than 3 years but less than 4 years;

~~(4)~~*(d)* the number of cases in that district that are pending for more than 4 years but less than 5 years; and

~~(5)~~*(e)* the number of cases in that district that are pending for more than 5 years.

*(2) By September 1 of each year, the office of court administrator shall report to the law and justice interim committee in accordance with 5-11-210. The report must identify for the previous calendar year:*

*(a) the number and type of cases assigned to each district court judge;*

*(b) the number of times each judge is substituted; and*

*(c) the name of each attorney who requests a substitution of a judge and the number of substitution requests the attorney makes for each judge.*"

**Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 26, 2023

# CHAPTER NO. 275

[SB 453]

AN ACT GENERALLY REVISING LAWS RELATED TO MEDICAL LICENSING BOARDS; REVISING THE COMPOSITION OF THE ALTERNATIVE HEALTH CARE BOARD; REVISING THE COMPOSITION OF THE BOARD OF MEDICAL EXAMINERS; TRANSFERRING OVERSIGHT OF ACUPUNCTURISTS FROM THE BOARD OF MEDICAL EXAMINERS TO THE ALTERNATIVE HEALTH CARE BOARD; AND AMENDING SECTIONS 2-15-1730, 2-15-1731, 37-3-203, 37-13-103, AND 37-13-316, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1730, MCA, is amended to read:

"**2-15-1730. Alternative health care board -- composition -- terms -- allocation.** (1) There is an alternative health care board.

(2) The board consists of ~~six~~ *the following eight* members ~~appointed by the governor with the consent of the senate. The members are:~~*:*

(a) two ~~persons~~ *members* from each of the health care professions regulated by the board ~~who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board~~;

(b) one public member ~~who is not a member of a profession regulated by the board~~; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

**Section 2.** 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 *the following* ~~13~~ *12* members ~~appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.~~

~~(3) The members are:~~*:*

(a) five ~~members having the degree of doctor~~ *doctors* of medicine, including one member with experience in emergency medicine~~;~~*, none of whom may be from the same county;*

(b) one ~~member having the degree of~~ doctor of osteopathy;

(c) one ~~member who is a~~ licensed podiatrist;

(d) one ~~member who is a~~ licensed nutritionist;

(e) one ~~member who is a~~ licensed physician assistant;

~~(f) one member who is a licensed acupuncturist;~~

~~(g)~~*(f)* one ~~member who is a volunteer~~ emergency care provider, as defined in 50-6-202; and

~~(h)~~*(g)* two *public* members ~~of the general public who are not medical practitioners~~.

~~(4) (a) The members having the degree of doctor of medicine may not be from the same county.~~

~~(b) The volunteer emergency care provider must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service and community-integrated health care.~~

~~(c) Each member must be a citizen of the United States.~~

~~(d) Each member, except for public members, must have been licensed and must have practiced medicine, acupuncture, emergency medical care, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.~~

~~(5)~~*(3)* Members shall serve staggered 4-year terms. A term begins on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

~~(6)~~*(4)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

**Section 3.** Section 37-3-203, MCA, is amended to read:

"**37-3-203. Powers and duties -- rulemaking authority.** (1) The board may:

(a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1 through 4, and of chapters covering ~~podiatry, acupuncture,~~ *podiatry,* physician assistants, nutritionists, and emergency care providers as set forth in Title 37, chapters ~~6, 13,~~ *6,* 20~~,~~ and 25, and 50-6-203, respectively. Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this chapter as well as Title 37, chapters 6, ~~13,~~ 20, and 25, and Title 50, chapter 6, regarding emergency care providers licensed by the board. The board also may assist the county attorneys of this state in the prosecution of persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection (1)(c).

(d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(e) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(b) The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to

enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

(3) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 16-12-502, for the use of marijuana for a debilitating medical condition provided for in Title 16, chapter 12, part 5. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the use of marijuana for a debilitating medical condition.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the use of marijuana for a debilitating medical condition, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the economic affairs interim committee in accordance with 5-11-210 and shall make a copy of the report available on the board's website.

(4) The board may enter into agreements with other states for the purposes of mutual recognition of licensing standards and licensing of physicians and emergency care providers from other states under the terms of a mutual recognition agreement."

**Section 4.** Section 37-13-103, MCA, is amended to read:

"**37-13-103. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Acupuncture" means a form of primary health care that is developed from traditional oriental and modern medical philosophies for providing evaluation, diagnosis, and treatment of human conditions, ailments, diseases, injuries, or infirmities. The term includes the manual, mechanical, injection, thermal, vibrational, electrical, and electromagnetic stimulation and treatment of traditional and modern acupuncture points, trigger points, motor points, and ashi points on the human body for promotion, maintenance, and restoration of health and prevention of disease. The term also includes but is not limited to auricular acupuncture, body acupuncture, distal acupuncture, dry needling, point bleeding, and point injection.

(b) Adjunctive therapies included in, but not exclusive to, acupuncture include:

(i) herbal and nutritional recommendations;

(ii) therapeutic exercise, including but not limited to taiji and qigong;

(iii) manual therapy, including but not limited to bodywork, tui na, and shiatsu; and

(iv) other therapies based on traditional oriental and modern medical theory, as taught in accredited acupuncture programs.

(2) "Acupuncturist" means a natural person licensed by the ~~board of medical examiners~~ *alternative health care board* to practice acupuncture.

(3) "Board" means the Montana ~~state board of medical examiners~~ *alternative health care board provided for in 2-15-1730*.

(4) "School of acupuncture" means a school in which acupuncture is taught that has been recognized and designated by the ~~board of medical examiners~~ *alternative health care board*."

**Section 5.** Section 37-13-316, MCA, is amended to read:

"**37-13-316. Penalty.** A person who violates any of the provisions of this chapter or the rules of the ~~Montana state board of medical examiners~~ *board* is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both."

Approved April 26, 2023

# CHAPTER NO. 276

[HB 811]

AN ACT REVISING EDUCATION LAWS TO ENHANCE PUBLIC AWARENESS AND INVOLVEMENT IN SCHOOL DISTRICT GOVERNANCE; AND REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO CREATE AN ONLINE REPOSITORY POSTING INFORMATION ABOUT SCHOOL DISTRICT TRUSTEES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. School district trustee information.** (1) The office of public instruction shall create a repository, accessible through its website, that makes the following information readily available for each school district of the state, which is updated within 14 days following the qualification and oathtaking under 20-3-307 of a newly elected trustee or for the filling of a vacancy on the board:

(a) a list of current trustees, including the terms the trustees are serving and, if applicable, the trustee district;

(b) contact information for current trustees;

(c) if the board of trustees maintains a website, a link to the website; and

(d) contact information for the school district clerk.

(2) The office of public instruction shall collaborate with school district clerks in developing the most efficient means to implement the requirements of this section.

**Section 2. Codification instruction.** [Section 1] 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 1].

Approved April 26, 2023

# CHAPTER NO. 277

[HB 805]

AN ACT REVISING LAWS RELATED TO COOPERATIVE ASSOCIATIONS AND COOPERATIVE AGRICULTURAL MARKETING; PROHIBITING USE OF THE TERM COOPERATIVE WITH EXCEPTIONS; AND AMENDING SECTIONS 2-15-401, 35-15-201, 35-15-203, 35-15-302, 35-15-411, 35-15-503, AND 35-17-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** 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, the secretary of state 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~~ *on* 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 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 to the legislature in accordance with 5-11-210 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;

(n) establish and maintain a central filing system that complies with the requirements of a central filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7 U.S.C. 1631.

(2) The secretary of state may:

(a) develop and implement a statewide electronic filing system as described in 2-15-404; *and*

(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.

*(3) (a) Except for a cooperative organized and incorporated to do business under Title 35, chapter 15, 16, 17, or 18, or filed under 30-10-105, the secretary of state may not accept a filing from a person using the term "cooperative" or a derivative of the term "cooperative" to register:*

*(i) an assumed business name pursuant to 30-13-202;*

*(ii) a nonprofit corporation pursuant to 35-2-119;*

*(iii) a limited liability corporation pursuant to 35-8-205;*

*(iv) a partnership pursuant to 35-10-113;*

*(v) a limited partnership pursuant to 35-12-511; or*

*(vi) a corporation pursuant to 35-14-120.*

*(b) A person using the term "cooperative" to register with the secretary of state in violation of subsection (3)(a) shall be fined not less than $50 or more than $1,000.*

*(4) This section does not apply to an entity formed prior to October 1, 2023.*"

**Section 2.** Section 35-15-201, MCA, is amended to read:

"**35-15-201. Incorporation.** (1) Whenever ~~two~~ *three* or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in 35-14-202.

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

**Section 3.** Section 35-15-203, MCA, is amended to read:

"**35-15-203. First meeting.** As soon as the initial shares of the capital stock have been subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting other business properly before them. Notice of the meeting must be given to each subscriber by mailing the notice *or sending the notice by electronic means*, properly addressed, at least 10 days before the meeting. The notice must contain the object, time, and place of the meeting."

**Section 4.** Section 35-15-302, MCA, is amended to read:

"**35-15-302. Stockholders' meetings -- place -- time -- call -- notice -- quorum.** (1) Unless the bylaws provide otherwise, stockholders' meetings ~~shall~~ *must* be held at the principal office or ~~such other~~ *another* place as the board may determine.

(2) An annual stockholders' meeting ~~shall~~ *must* be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, ~~such~~ *the* meeting ~~shall~~ *must* be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at ~~such~~ *the* meeting.

(4) Written *or electronic* notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called,

~~shall~~ *must* be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to ~~such~~ *the* stockholders may be given by notifying ~~such~~ *the* delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which ~~such~~ *the* delegates or alternates are elected.

(6) A quorum at a regular or special meeting ~~shall~~ *must* be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person ~~shall~~ *must* constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken."

**Section 5.** Section 35-15-411, MCA, is amended to read:

"**35-15-411. Disposal of earnings -- dividends -- reserve fund -- educational fund.** The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding ~~6% per annum on the par value thereof~~ *8% a year*; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in ~~said~~ *the* reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining ~~of said~~ profits, if any, by uniform dividends ~~upon~~ *on* the amount of purchases of patrons and ~~upon~~ *on* the wages and for salaries of employees, the amount of ~~such~~ uniform dividends on the amount of their purchases, which may be credited to the account of ~~such~~ patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends ~~shall~~ *must* be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons."

**Section 6.** Section 35-15-503, MCA, is amended to read:

"**35-15-503. Meeting to consider plan -- notice.** (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles ~~shall~~ *must* be mailed *or sent by electronic means* to each stockholder of the associations to be affected ~~thereby~~ *by the proposed plan or the proposed new articles*.

(2) The notice ~~shall~~ *must* advise the stockholders of each association of the time and place each association shall meet, at which time the proposal ~~shall~~ *must* be considered and voted ~~upon~~ *on* by each association. The meetings ~~shall~~ *must* be held not less than 30 or more than 60 days after the mailing of notice. The plan ~~shall~~ *must* be considered adopted if a quorum is present and two-thirds of those voting vote in its favor."

**Section 7.** Section 35-17-305, MCA, is amended to read:

"**35-17-305. Meetings of members -- general and special -- how called -- notice -- one vote ~~per~~ *for each* member.** (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors ~~shall~~ *must* have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. ~~Such~~ *The* meeting must ~~thereupon~~ *then* be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes ~~thereof~~ *of the meetings*, ~~shall~~ *must* be mailed *or sent by electronic means* to each member at least 10 days prior to the meeting. However, the bylaws may require instead that ~~such~~ *the* notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder ~~shall~~ *may* be entitled to more than one vote."

Approved April 26, 2023

# CHAPTER NO. 278

[HB 786]

AN ACT REQUIRING REPORTING ON ADVERSE EFFECTS OF MEDICATION ABORTIONS; PROVIDING A PENALTY FOR FAILURE TO REPORT; AND AMENDING SECTIONS 50-20-105 AND 50-20-110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-20-105, MCA, is amended to read:

"**50-20-105. Duties of department.** (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110~~(5)~~*(6)*.

(3) The department shall report to the attorney general any apparent violation of this chapter.

(4) The department shall develop a certification form for use in accordance with 50-20-113."

**Section 2.** Section 50-20-110, MCA, is amended to read:

"**50-20-110. Reporting of practice of abortion.** (1) Every facility in which an abortion is performed within the state shall keep on file ~~upon~~*,* *on* a form prescribed by the department*,* a statement dated and certified by the physician who performed the abortion ~~setting forth such~~ *that provides* information with respect to the abortion as *required by* the department by ~~regulation shall require~~ *rule*~~, including~~. *The information must include* but *is* not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall ~~cause such~~ *request* pathology studies ~~to be made in connection therewith~~ as *required by* the department ~~shall require~~ by ~~regulation~~ *rule*, and the facility shall keep the reports ~~thereof~~ *of the pathology studies* on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

*(4) A health care provider who prescribes a medication intended to cause or induce an abortion shall keep on file, on a form prescribed by the department, a statement dated and certified by the health care provider reporting any adverse side effects experienced by the person to whom the medication was prescribed.*

~~(4)~~*(5) (a)* ~~Such facility shall, within~~ *Within* 30 days after the abortion, *a facility shall* file with the department a report ~~upon~~ *on* a form prescribed by the department and certified by the custodian of the records or physician in charge

of ~~such~~ *the* facility ~~setting forth~~ *that provides* all of the information required in subsections (1), (2), and (3)~~ of this section,~~.

*(b) Within 30 days of prescribing a medication intended to cause or induce an abortion, a health care provider shall file a report with the department that provides the information required under subsection (4).*

*(c) Reports filed under this subsection (5)* ~~except such~~ *may not contain any* information ~~as~~ *that* would identify any individual involved with the abortion.

*(d)* ~~The~~ *A* report shall exclude copies of any documents required to be filed by subsection (3) ~~of this section~~, but shall certify that ~~such~~ *the* documents were ~~duly~~ executed and are on file.

~~(5)~~*(6)* All reports and documents required by this chapter ~~shall~~ *must* be treated with the confidentiality afforded to medical records, subject to ~~such~~ disclosure as ~~is~~ permitted by law. Statistical data not identifying any individual involved in an abortion ~~shall~~ *must* be made public by the department annually, and the report required by subsection ~~(4)~~ *(5)* of this section to be filed with the department ~~shall~~ *must* be available for public inspection except ~~insofar as it~~ *any information that* identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

~~(6)~~*(7) (a)* Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

*(b) Violation of the provisions of subsections (4) or (5)(b) by a health care provider is unprofessional conduct as defined in 37-1-308 and is subject to the sanctions provided for in 37-1-312(1)(b) through (1)(j), up to a maximum suspension of the provider's license for a period of 1 year.*"

Approved April 26, 2023

# CHAPTER NO. 279

[HB 751]

AN ACT GENERALLY REVISING LAWS RELATED TO NONOPIOID ALTERNATIVES TO THE TREATMENT OF PAIN; AND REQUIRING THE DEVELOPMENT OF EDUCATIONAL MATERIALS ON NONOPIOID ALTERNATIVES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Nonopioid alternatives to opioid prescriptions -- educational materials.** The department of public health and human services shall develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of acute nonoperative, acute perioperative, subacute, or chronic pain. The pamphlet must, at a minimum, include:

(1) information on available nonopioid alternatives for the treatment of pain, including available nonopioid medicinal drugs or drug products and nonpharmacological therapies; and

(2) the advantages and disadvantages of the use of nonopioid alternatives.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 1, part 2, and the provisions of Title 50, chapter 1, part 2, apply to [section 1].

Approved April 26, 2023

# CHAPTER NO. 280

[HB 745]

AN ACT REVISING EDUCATION LAWS RELATED TO RELIGIOUS PRACTICES AND MATERIALS IN SCHOOLS; ALLOWING THE USE OF RELIGIOUS BOOKS DURING FREE READING AND FOR SELF-SELECTED READING REQUIREMENTS; EXPANDING AND CLARIFYING THE AUTHORIZATION OF PRAYER IN SCHOOLS; AMENDING SECTION 20-7-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-7-112, MCA, is amended to read:

"**20-7-112. Sectarian publications prohibited ~~and~~ -- *religious materials allowed* -- prayer permitted.** *(1) (a)* A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines. ~~However, any teacher, principal, or superintendent may open the school day with a prayer.~~

*(b)* This ~~section~~ *subsection (1)* does not prohibit*:*

*(i)* a school library from including the Bible or other religious material having cultural, historical, or educational significance*; or*

*(ii) a pupil from reading from the Bible or other religious material during free reading time.*

*(c) If a school, class, or course has requirements for self-selected reading, a pupil must be allowed to read from the Bible or other religious material to meet those requirements.*

*(2) Prayer is permitted in a school, on school grounds, and at school-sponsored events, but a person may not be compelled to pray. The school day may begin with a prayer.*"

**Section 2. Effective date.** [This act] is effective July 1, 2023.

Approved April 26, 2023

# CHAPTER NO. 281

[HB 744]

AN ACT PROVIDING THAT A STUDENT IS NOT PROHIBITED FROM INITIATING OR PARTICIPATING IN A CONVERSATION ABOUT RELIGION, RELIGIOUS BELIEFS, OR RELIGIOUS PRACTICES WITH ANOTHER STUDENT OR A TEACHER; AMENDING SECTION 20-7-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-7-112, MCA, is amended to read:

"**20-7-112. Sectarian publications prohibited and prayer permitted.** *(1)* A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer.

*(2)* This section does not prohibit*:*

*(a)* a school library from including the Bible or other religious material having cultural, historical, or educational significance*; or*

*(b) a student from initiating or participating in a conversation about religion, religious beliefs, or religious practices with another student or a teacher*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 282

[HB 739]

AN ACT REVISING LAWS RELATED TO LEGISLATIVE OVERSIGHT OF ADMINISTRATIVE RULES; PROVIDING AN EXCEPTION FOR THE ADOPTION OF RULES IN THE LAST QUARTER OF A YEAR BEFORE A LEGISLATIVE SESSION; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy

and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section, unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule, and unless the adoption is in compliance with the prohibitions of subsection (11). The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) Subject to 2-4-112, if a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice and will address the objections at the

next committee meeting. Following notice by the committee to the agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

(10) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

(11) (a) In the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year.

(b) This subsection (11) does not apply to:

(i) an emergency rule adopted under 2-4-303; ~~or~~

(ii) *subject to subsection (11)(c)(i),* a rule adopted for implementation of a program or policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1*; or*

*(iii) subject to subsection (11)(c)(ii), a rule adopted by providing the proposal notice and statement of reasoning with an opportunity to object to the appropriate administrative rule review committee.*

*(c) (i)* A rule may only be exempted under ~~this~~ subsection (11)(b)(ii) if the notice required under 2-4-302(1)(a) provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

*(ii) A rule may be exempted under subsection (11)(b)(iii) only if the agency provides a copy of the proposal notice and an explanation of the reason why the rule must be adopted before the end of the year by electronic mail to each member of the committee and the committee staff. If the committee does not object to the proposal within 10 business days after the electronic mail of the proposal and explanation has been sent to the committee, the agency may proceed with adoption of the proposed rule. If, during the 10-day review period, a majority of the members notify the committee presiding officer that those members object to the proposed rulemaking, the presiding officer shall notify the agency by electronic mail that the committee objects. Following notice of the objection, a rule may not be adopted before the end of the year.*"

**Section 2. Applicability.** [This act] applies to rule proposals published on or after [the effective date of this act].

Approved April 26, 2023

# CHAPTER NO. 283

[HB 709]

AN ACT CREATING A PUBLICLY AVAILABLE DISTRICT COURT AND JUDGE KEY PERFORMANCE INDICATOR DISPLAY; REQUIRING CERTAIN EXISTING DATA TO BE INCLUDED IN THE DISPLAY; REQUIRING THE COURT ADMINISTRATOR AND DISTRICT COURT COUNCIL TO CREATE THE DISPLAY; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. District court and judge key performance indicators display.** (1) There is a district court and judge key performance indicator display to allow the public to view reports or other static documents related to court and judge performance. At a minimum, the display must be updated:

(a) quarterly for:

(i) statewide case processing measures; and

(ii) case processing measures, including on-time case processing statistics, case clearance rates, and age of active cases statistics; and

(b) annually for:

(i) case filings by major case categories;

(ii) new case filings;

(iii) workload filings by judicial district;

(iv) rates at which each district court judge's decisions are overturned wholly or in part on appeal.

(2) The data described in subsection (1)(a)(ii) must be published for each judge. The court administrator shall publish a comprehensive yearend report.

(3) In addition to the measures listed in subsection (1), the district court council shall:

(a) inventory all of the current measures used by the judicial branch to evaluate district court workload and efficiency;

(b) consider research on any additional objective quality indicators of judicial performance; and

(c) review the data on the dashboard at least annually for the purposes of quality improvement and management of the district courts, judges, and standing masters.

(4) When resources allow, the court administrator is encouraged to transition any display of a static report to an interactive dashboard display.

**Section 2. Transition -- reports.** (1) By June 30, 2025, the court administrator and the district court council shall make the display available publicly. The activities required by [section 1] and this section must be completed using existing resources.

(2) The court administrator shall report to the law and justice interim committee and the judicial branch, law enforcement, and justice budget committee established in 5-12-501 on the progress of the display created in [this act] before the end of December 2023 and again before September 15, 2024.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 7, and the provisions of Title 3, chapter 1, part 7, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 284

[HB 703]

AN ACT GENERALLY REVISING LAWS RELATED TO EMOTIONAL SUPPORT ANIMALS; ALLOWING A LANDLORD TO REQUEST CERTAIN SUPPORTING INFORMATION RELATED TO A TENANT'S NEED FOR AN EMOTIONAL SUPPORT ANIMAL; REQUIRING A LICENSED HEALTH CARE PRACTITIONER TO PROVIDE SUPPLEMENTAL INFORMATION THAT IDENTIFIES THE EMOTIONAL NEED THE ANIMAL SUPPORTS;

PROHIBITING A LANDLORD FROM REQUIRING INFORMATION RELATED TO A PERSON'S DIAGNOSIS OR SEVERITY OF DISABILITY; AND PROVIDING THAT A TENANT IS LIABLE FOR DAMAGES OR INJURY DONE TO PROPERTY OR OTHER PERSONS BY AN EMOTIONAL SUPPORT ANIMAL.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Emotional support animals -- documentation.** (1) A tenant with a disability or a disability-related need for an emotional support animal may request and be approved by a landlord to keep an emotional support animal as a reasonable accommodation in housing.

(2) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) deny a reasonable accommodation request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property that cannot be reduced or eliminated by another reasonable accommodation;

(b) if a tenant's disability-related need for an emotional support animal is not readily apparent, request supporting information that reasonably supports the tenant's need for the particular emotional support animal being requested. Supporting information may include:

(i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice that identifies the particular assistance or therapeutic emotional support provided by the specific animal. Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional license held by the health care practitioner; and

(ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and

(c) require proof of compliance with state and local licensure and vaccination requirements for each emotional support animal.

(3) If a tenant requests to keep more than one emotional support animal, information for each emotional support animal must be provided pursuant to subsection (2).

(4) A landlord:

(a) may not request information under this section that discloses a diagnosis or severity of a tenant's disability or any medical records relating to the disability, but a tenant may voluntarily disclose such information or medical records to the landlord at the tenant's discretion; and

(b) shall issue a written determination after receiving supplemental information required in subsection (2) and notice the determination pursuant to 70-24-108.

(5) An emotional support animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not, by itself, sufficient information to reliably establish that a tenant has a disability-related need for an emotional support animal.

(6) A tenant with a disability-related need for an emotional support animal is liable for any damage done to the premises or to another person on the premises by the tenant's emotional support animal.

(7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation of this section.

(8) This section does not apply to a service animal as defined in 49-4-203.

(9) Nothing in this section may be construed to restrict existing federal law and state law related to a person's right to a reasonable accommodation and equal access to housing, including but not limited to the federal Fair Housing Act, the federal Americans with Disabilities Act of 1990, or Title 49, chapter 2.

(10) As used in this section, the following definitions apply:

(a) "Emotional support animal" means an animal that provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be trained or certified. The term does not include service animals as defined in 49-4-203.

(b) "Health care practitioner" means a mental health professional as defined in 53-21-102 who:

(i) has established a client-provider relationship with a tenant at least 30 days prior to providing supporting information requested from a landlord regarding the tenant's need for an emotional support animal;

(ii) completes a clinical evaluation of a tenant regarding the need for an emotional support animal; and

(iii) is acting within the scope of practice of the person's license or certificate.

**Section 2. Emotional support animals -- documentation.** (1) A tenant with a disability or a disability-related need for an emotional support animal may request and be approved by a landlord to keep an emotional support animal as a reasonable accommodation in housing.

(2) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) deny a reasonable accommodation request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property that cannot be reduced or eliminated by another reasonable accommodation;

(b) if a tenant's disability-related need for an emotional support animal is not readily apparent, request supporting information that reasonably supports the tenant's need for the particular emotional support animal being requested. Supporting information may include:

(i) information from a health care practitioner who has personal knowledge of the tenant's disability and is acting within the scope of the practitioner's practice that identifies the particular assistance or therapeutic emotional support provided by the specific animal. Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional license held by the health care practitioner; and

(ii) information from any other source that the landlord determines to be reliable in accordance with the federal Fair Housing Act and Title 49, chapter 2; and

(c) require proof of compliance with state and local licensure and vaccination requirements for each emotional support animal.

(3) If a tenant requests to keep more than one emotional support animal, information for each emotional support animal must be provided pursuant to subsection (2).

(4) A landlord:

(a) may not request information under this section that discloses a diagnosis or severity of a tenant's disability or any medical records relating to the disability, but a tenant may voluntarily disclose such information or medical records to the landlord at the tenant's discretion; and

(b) shall issue a written determination after receiving supplemental information required in subsection (2) and notice the determination pursuant to 70-33-106.

(5) An emotional support animal registration of any kind, including but not limited to an identification card, patch, certificate, or similar registration obtained electronically or in person, is not, by itself, sufficient information to reliably establish that a tenant has a disability-related need for an emotional support animal.

(6) A tenant with a disability-related need for an emotional support animal is liable for any damage done to the premises or to another person on the premises by the tenant's emotional support animal.

(7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation of this section.

(8) This section does not apply to a service animal as defined in 49-4-203.

(9) Nothing in this section may be construed to restrict existing federal law and state law related to a person's right to a reasonable accommodation and equal access to housing, including but not limited to the federal Fair Housing Act, the federal Americans with Disabilities Act, or Title 49, chapter 2.

(10) As used in this section, the following definitions apply:

(a) "Emotional support animal" means an animal that provides emotional, cognitive, or other similar support to an individual with a disability and does not need to be trained or certified. The term does not include service animals as defined in 49-4-203.

(b) "Health care practitioner" means a mental health professional as defined in 53-21-102 who:

(i) has established a client-provider relationship with a tenant at least 30 days prior to providing supporting information requested from a landlord regarding the tenant's need for an emotional support animal;

(ii) completes a clinical evaluation of a tenant regarding the need for an emotional support animal; and

(iii) is acting within the scope of practice of the person's license or certificate.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, part 1, and the provisions of Title 70, chapter 24, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 70, chapter 33, part 1, and the provisions of Title 70, chapter 33, part 1, apply to [section 2].

Approved April 26, 2023

# CHAPTER NO. 285

[HB 695]

AN ACT REVISING TEMPORARY RESTRAINING ORDER LAW; REVISING THE STANDARD FOR TEMPORARY RESTRAINING ORDERS AGAINST THE STATE AND ITS SUBDIVISIONS; PROVIDING A DEFINITION; AND AMENDING SECTION 27-19-315, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-19-315, MCA, is amended to read:

"**27-19-315. When restraining order may be granted without notice.** ~~A~~ *(1) Except as provided in subsection (2), a* temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if:

~~(1)~~*(a)* it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury

to the applicant before the adverse party or the party's attorney could be heard in opposition; and

~~(2)~~*(b)* the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give notice and the reasons supporting the applicant's claim that notice should not be required.

*(2) If the state, the state's departments, agencies, or political subdivisions, or officers of the state or a political subdivision acting in their official capacities are the adverse party, a temporary restraining order may not be granted unless:*

*(a) notice could not be provided through no fault of the moving party; or*

*(b) the suit is brought pursuant to Title 40.*

*(3) As used in this section, "political subdivision" has the meaning provided in 2-9-101.*"

Approved April 26, 2023

# CHAPTER NO. 286

[HB 684]

AN ACT PROHIBITING USE OF VACCINATION STATUS IN CERTAIN ADMINISTRATIVE AND LEGAL PROCEEDINGS RELATED TO CHILDREN AND INCAPACITATED ADULTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Vaccination status prohibited as evidence or grounds for decision.** A court may not:

(1) admit into evidence in any proceeding under this part the vaccination status of a parent or a minor child; or

(2) consider a person's vaccination status in making any order related to child support, child custody, visitation, or parental rights.

**Section 2. Vaccination status prohibited as grounds for action.** The vaccination status of a parent or child may not be admitted as evidence or considered as a factor in any administrative or judicial decision regarding a petition filed under part 3, part 4, part 6, or part 10 of this chapter.

**Section 3. Vaccination status prohibited as evidence or grounds for decision.** The vaccination status of a parent, putative father, child, or person seeking to adopt a child may not be admitted as evidence or considered as a factor in any administrative or judicial evaluation or decision regarding an adoption.

**Section 4. Vaccination status prohibited as evidence or grounds for decision.** In considering and deciding a petition for guardianship of a minor pursuant to part 2 or of an incapacitated adult pursuant to part 3, a court may not:

(1) admit into evidence the vaccination status of a person seeking appointment as a guardian; or

(2) consider a person's vaccination status when making an order on the petition.

**Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 42, chapter 1, part 1, and the provisions of Title 42, chapter 1, part 1, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 72, chapter 5, part 1, and the provisions of Title 72, chapter 5, part 1, apply to [section 4].

**Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 287

[HB 682]

AN ACT REVISING LAWS RELATED TO THE COLLECTION OF GENETIC MATERIAL FOR NEWBORN SCREENINGS; LIMITING THE USE OF GENETIC MATERIAL; ALLOWING PARENTS AND GUARDIANS TO REQUEST DESTRUCTION OF SAMPLES COLLECTED FOR TESTING; AMENDING SECTION 50-19-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Genetic material related to newborn screening -- limitations -- retention.** (1) Genetic material obtained to conduct the newborn screenings required under this part may not be used for any purposes other than the required screenings unless a parent or guardian consents in writing to use of the material for other purposes.

(2) A parent or guardian may request at any time that blood or other samples obtained for the screenings be destroyed:

(a) at any time after the initial test is completed, if the test results are within a normal range; or

(b) no sooner than 30 days after a test is completed, if the test results are outside of a normal range.

(3) The facility in which a child is born or newborn care is provided or the person responsible for registration of the birth of a newborn shall inform parents or guardians in writing of their rights under this section at or before the time of collection of any samples for newborn screenings. The notification must include information on how to submit a request for destruction of the samples.

**Section 2.** Section 50-19-203, MCA, is amended to read:

"**50-19-203. Newborn screening and followup for metabolic and genetic disorders.** (1) A person in charge of a facility in which a child is born or a facility in which a newborn is provided care or a person responsible for the registration of the birth of a newborn shall ensure that each newborn is administered tests designed to detect inborn metabolic and genetic disorders as required under rules adopted by the department. The department shall initiate rulemaking to add testing for a new metabolic or genetic disorder to the newborn screening panel on occurrence of the following:

(a) a reliable test or series of tests for screening newborns for a genetic or metabolic condition using dried blood spots or other testing is developed and registered with the United States food and drug administration;

(b) quality assurance testing methodology is available and approved by the United States centers for disease control and prevention;

(c) necessary materials for the testing and quality assurance testing are commercially available; and

(d) the newborn screening advisory committee has recommended that the test be added to the newborn screening protocol.

(2) *(a)* The tests must be done by an approved laboratory. An approved laboratory must be the laboratory of the department or a laboratory approved by the department.

*(b) A laboratory shall destroy any genetic materials submitted for a newborn if requested by a parent or guardian as provided in [section 1].*

*(c) A facility that collected samples for tests required under this section shall destroy any excess genetic material that was collected and was not sent to an approved laboratory for testing.*

(3) The department shall contract with one or more providers qualified to provide followup services, including counseling and education, for children and parents of children identified with metabolic or genetic disorders to ensure the availability of followup services."

**Section 3. Codification instruction.** [Section 1] 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 1].

**Section 4. Effective date.** [This act] is effective July 1, 2023.

Approved April 26, 2023

# CHAPTER NO. 288

[HB 661]

AN ACT REVISING PUBLIC SAFETY LAWS; ALLOWING A COURT TO USE THE RESULTS OF A DANGEROUSNESS OR LETHALITY ASSESSMENT WHEN CONSIDERING THE RELEASE OR DETENTION OF CERTAIN DEFENDANTS; AND AMENDING SECTION 46-9-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-9-109, MCA, is amended to read:

"**46-9-109. Release or detention hearing.** (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court may use a validated pretrial risk assessment tool and shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

(b) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(c) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; ~~and~~

(d) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required*; and*

*(e) for a defendant charged with a violation of 45-5-202, 45-5-206, 45-5-213, or 45-5-215 against an intimate partner, a dangerousness or lethality assessment if it is available to the court.*

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community."

Approved April 26, 2023

# CHAPTER NO. 289

[HB 660]

AN ACT REVISING NOTIFICATION REQUIREMENTS REGARDING VACANCIES ON APPOINTMENTS; ALLOWING NOTIFICATION BY ELECTRONIC MEANS; REMOVING THE REQUIREMENT TO PROVIDE A COPY OF THE NOTICE TO THE LIEUTENANT GOVERNOR; AMENDING SECTIONS 2-15-201 AND 5-16-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-201, MCA, is amended to read:

"**2-15-201. Powers and duties of governor.** (1) In addition to the duties prescribed by the constitution, the governor shall:

(a) supervise the official conduct of all executive and ministerial officers; *and*

(b) ensure that all offices are filled and that the duties of the offices are performed or, in default of the performance, apply a remedy that the law allows. If the remedy is imperfect, the governor shall acquaint the legislature with the issue at its next session.

(2) ~~(a)~~ The governor shall make the appointments and fill the vacancies as required by law. When a vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and must be filled by gubernatorial appointment, the governor shall ~~have posted in a conspicuous place in the state capitol~~ *post* a notice *by electronic means*:

~~(i)~~*(a)* announcing the actual or anticipated vacancy in the position;

~~(ii)~~*(b)* describing the qualifications for the position, if any; and

~~(iii)~~*(c)* describing the procedure for applying for appointment to the position.

~~(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor who may publish the notice in an appropriate publication.~~

(3) The governor is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(4) Whenever any suit or legal proceeding is pending against this state that may affect the title of this state to any property or that may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state and may employ additional counsel that the governor may judge expedient.

(5) The governor may require the attorney general or the county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(6) The governor may require the attorney general to aid the county attorney in the discharge of the county attorney's duties.

(7) The governor may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(8) The governor shall perform the duties respecting fugitives from justice that are prescribed by Title 46, chapter 30.

(9) The governor shall issue land warrants and patents, as prescribed in 77-2-342.

(10) The governor may require any officer or board to make special reports, upon demand, in writing.

(11) The governor shall discharge the duties of a member of the board of examiners, of a nonvoting ex officio member of the state board of education, and of a member of the board of land commissioners.

(12) The governor has the other powers and shall perform the other duties that are devolved upon the governor by this section or any other law of this state."

**Section 2.** Section 5-16-104, MCA, is amended to read:

"**5-16-104. Vacancies.** (1) A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session ~~shall~~ *must* be filled by the selection of a member of the legislature by the same method as the original appointment. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-16-101.

(2) ~~(a)~~ When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall ~~have posted in a conspicuous place in the state capitol~~ *post* a notice *by electronic means* announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.

~~(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor, who may publish the notice in an appropriate publication.~~"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 290

[HB 659]

AN ACT PROVIDING A 30-DAY GRACE PERIOD FOR RENEWALS OF CONCEALED WEAPON PERMITS; AND AMENDING SECTION 45-8-322, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-322, MCA, is amended to read:

"**45-8-322. Application, renewal, permit, and fees.** (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No

CITIZEN OF THE UNITED STATES ( ) Yes ( ) No

18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name:

Last First Middle

Alias/Maiden/Nickname:

Address: Home: Zip

Employer:. Zip

Phone: / /

Home Employer Message

Place of birth: Date of birth:

Driver's license #: Issuing state:

Social Security # (optional):

Sex ..... Ht. ..... Wt. ..... Eyes ..... Hair .....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

| | Employer or business name | Address | Dates of employment |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

| | City | State | Dates of residence |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |

| MILITARY SERVICE, BRANCH | FROM | TO |
|---|---|---|

| TYPE OF DISCHARGE | RANK UPON DISCHARGE |
|---|---|

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

| City | State | Charge | Date |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

| Name | Address | Phone |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....
Signature

.....
Date of application

This application must be signed in the presence of the sheriff or a designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee for each renewal and upon request for renewal made within 90 days before expiration of the permit *with a 30-day grace period after the expiration*. The permit and each renewal must be

in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license number, state identification card number, or tribal identification card number, and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may require an applicant to submit the applicant's fingerprints, and may charge the applicant $5 for fingerprinting. A renewal does not require repeat fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-324.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

(7) All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information pursuant to Title 44, chapter 5."

Approved April 26, 2023

# CHAPTER NO. 291

[HB 655]

AN ACT REQUIRING MEDICAID COVERAGE OF CERTAIN HOME BIRTHS ATTENDED BY A MIDWIFE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-8-202, 37-27-105, AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an

advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants; and

(j) establish a medical assistance program to assist licensees who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state. For purposes of funding this medical assistance program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter*, including rules describing the circumstances that constitute a low risk of adverse birth outcomes for planned home births attended by a nurse-midwife*; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

**Section 2.** 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 establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(b) the development of eligibility criteria for client screening by direct-entry midwives to achieve the goal of providing midwifery services to women during low-risk pregnancies;

*(c) the establishment of the circumstances that constitute a low risk of adverse birth outcomes for planned home births attended by direct-entry midwives;*

~~(c)~~*(d)* the development of standardized informed consent and reporting forms;

~~(d)~~*(e)* the adoption of ethical standards for licensed direct-entry midwives;

~~(e)~~*(f)* the adoption of supporting documentation requirements for primary birth attendants; and

~~(f)~~*(g)* the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

**Section 3.** Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age, in accordance with federal regulations and subsection (10)(b);

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department;

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in 33-22-153;

(n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103; ~~and~~

(o) services provided by a person certified in accordance with 37-2-318 to provide services in accordance with the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.*; and*

*(p) planned home births for women with a low risk of adverse birth outcomes, as established by the appropriate licensing board, that are attended by certified nurse-midwives licensed under Title 37, chapter 8, or direct-entry midwives licensed under Title 37, chapter 27. Coverage under this section includes prenatal care and postpartum care.*

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;

(q) services of behavioral health peer support specialists certified under Title 37, chapter 38, provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and

(r) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not

required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of medical assistance only who are covered under a group related to a program providing cash assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may include those optional services listed in subsections (4)(a) through (4)(r) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) (a) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(b) The department shall strive to close gaps in services provided to individuals suffering from mental illness and co-occurring disorders by doing the following:

(i) simplifying administrative rules, payment methods, and contracting processes for providing services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be cost-neutral for the biennium beginning July 1, 2017.

(ii) publishing a report on an annual basis that describes the process that a mental health center or chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) (a) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(b) The department shall, with reasonable promptness, provide access to all medically necessary services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) (a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department of public health and human services shall report this information to the following committees:

(i) the children, families, health, and human services interim committee;

(ii) the legislative finance committee; and

(iii) the health and human services budget committee.

(b) In its report to the committees, the department shall provide an explanation for the proposed changes and an estimated budget impact to the department over the next 4 fiscal years.

(13) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L. 2019.)"

**Section 4. Effective date.** [This act] is effective July 1, 2023.

Approved April 26, 2023

# CHAPTER NO. 292

[HB 640]

AN ACT REVISING LAWS RELATED TO THE TESTING, STORAGE, AND DISPOSAL OF SEXUAL ASSAULT EVIDENCE KITS; REPEALING SECTION 7, CHAPTER 138, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Retention and disposal of sexual assault evidence kits -- victim notification.** (1) Sexual assault evidence kits reported to law enforcement pursuant to 46-15-404, anonymous sexual assault evidence kits collected as provided in 46-15-411, and the related contents of reported or anonymous sexual assault evidence kits must be stored in a secure and reasonable manner that preserves evidence for 75 years from the date of collection.

(2) A victim may request notification before the victim's sexual assault evidence kit and related contents are destroyed.

(3) If requested by the victim, the agency with custody of the victim's sexual assault evidence kit and its contents shall provide written notice to the victim 120 days before the intended destruction or disposal of the sexual assault evidence kit or its contents. The notification must include:

(a) a description of the biological evidence;

(b) a statement of the intended destruction or disposal of the biological evidence in 120 days;

(c) the name, mailing address, and other contact information of the agency with custody of the evidence;

(d) any other information the agency considers pertinent.

(4) If any party to the offense objects to the destruction or disposal of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the destruction or disposal of the biological evidence must take place.

**Section 2. Repealer.** Section 7, Chapter 138, Laws of 2019, is repealed.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 293

[HB 636]

AN ACT REVISING WORKERS' COMPENSATION LAWS RELATED TO EXEMPTIONS FROM THE WORKERS' COMPENSATION ACT; REVISING OWNERSHIP INTEREST REQUIREMENTS RELATING TO A CORPORATION OR A LIMITED LIABILITY COMPANY; AND AMENDING SECTION 39-71-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3 unless the provisions of 39-71-442 apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns ~~20%~~ *10%* or more of the number of shares of stock in the corporation or owns ~~20%~~ *10%* or more of the limited liability company; or

(B) owns less than ~~20%~~ *10%* 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%~~ *10%* or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its

insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Approved April 26, 2023

# CHAPTER NO. 294

[HB 610]

AN ACT ALLOWING EMERGENCY CARE PROVIDERS TO PROVIDE PATIENT CARE IN A HEALTH CARE FACILITY; PROVIDING A DEFINITION; REVISING DEFINITIONS; AMENDING SECTIONS 50-6-105, 50-6-201, 50-6-202, AND 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Provision of patient care in health care facility.** An emergency care provider may provide patient care in a health care facility when the care is approved by the health care facility, provided under online medical direction as defined in 50-6-302, and within the scope of the emergency care provider's licensure level.

**Section 2.** Section 50-6-105, MCA, is amended to read:

"**50-6-105.** ~~**Emergency medical**~~ ***Medical*** **care standards -- review process.** (1) The board of medical examiners shall establish patient care standards for:

(a) out-of-hospital emergency medical treatment and interfacility transportation; and

(b) community-integrated health care.

(2) (a) Complaints involving out-of-hospital care, interfacility care, community-integrated health care, *patient care within a health care facility,* or the operation of an emergency medical service, as defined in 50-6-302, must be filed with the board and reviewed by a screening panel pursuant to 37-1-307.

(b) If a complaint is initially filed with the department of public health and human services, the department shall refer the complaint to the board for review by a screening panel.

(3) (a) When a complaint involves the operation or condition of an emergency medical service, the screening panel shall refer the complaint to the department for investigation as provided in 50-6-323.

(b) When a complaint involves patient care provided by an emergency care provider, the screening panel shall:

(i) refer the complaint to the board for investigation as provided in 37-1-308 and 50-6-203; and

(ii) forward to the department the complaint and the results of the screening panel's initial review as soon as the review is completed.

(c) When a complaint involves a combination of patient care and emergency medical service matters, the screening panel shall refer the complaint to both the department and the board for matters that fall within the jurisdiction of each entity.

(4) For a complaint involving patient care, the board shall:

(a) immediately share with the department any information indicating:

(i) a potential violation of department rules; or

(ii) that the existing policies or practices of an emergency medical service may be jeopardizing patient care; and

(b) notify the department when:

(i) a sanction is imposed on an emergency care provider; or

(ii) the complaint is resolved.

(5) For a complaint involving an emergency medical service, the department shall:

(a) immediately share with the board any information indicating:

(i) a potential violation of board rules; or

(ii) that the practices of an emergency care provider may be jeopardizing patient care; and

(b) notify the board when:

(i) a sanction is imposed on an emergency medical service; or

(ii) the complaint is resolved."

**Section 3.** Section 50-6-201, MCA, is amended to read:

"**50-6-201. Legislative findings -- duty of board.** (1) The legislature finds and declares that a program for emergency care providers is required in order to provide the safest and most efficient delivery of emergency and community-integrated health care.

(2) The legislature further finds that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is important in reducing the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition.

(3) The legislature further finds that *emergency care providers* ~~community-integrated health care can prevent illness and injury and~~ can help fill gaps in the state's health care system, particularly in rural communities with limited health care services and providers*, by providing:*

*(a) community-integrated health care to prevent illness and injury; and*

*(b) patient care within a health care facility that is appropriate to a patient's needs and the emergency care provider's training*.

(4) The board has a duty to ensure that emergency care providers are properly licensed and provide proper treatment to patients in their care."

**Section 4.** Section 50-6-202, MCA, is amended to read:

"**50-6-202. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(2) "Emergency care provider" means a person licensed by the board, including but not limited to an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-integrated health care.

*(3) "Health care facility" has the meaning provided in 50-5-101.*

~~(3)~~*(4)* "Volunteer emergency care provider" means an individual who is licensed pursuant to this part and provides out-of-hospital, emergency medical, or community-integrated health care*, patient care within a health care facility,* or interfacility transport:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical or community-integrated health care as part of the individual's job duties."

**Section 5.** Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the meaning provided in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(4) "Community-integrated health care" means the provision of out-of-hospital medical services that an emergency care provider with an endorsement may provide as determined by board rule.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Emergency medical service" means an out-of-hospital health care treatment service or interfacility emergency medical transportation provided by an ambulance or nontransporting medical unit that is licensed by the department to provide out-of-hospital health care treatment services or interfacility emergency medical transportation, including community-integrated health care.

(7) "Nonemergency ambulance transport" means the use of an ambulance to transport a patient between health care facilities, as defined in 50-5-101, including federal facilities, when the patient's medical condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or for emergency medical treatment upon arrival at the receiving health care facility.

(8) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units

provide any one of varying types and levels of service defined by department rule but may not transport patients.

(9) "Offline medical direction" means the function of a board-licensed physician or physician assistant in providing:

(a) medical oversight and supervision for an emergency medical service or an emergency care provider; and

(b) review of patient care techniques, emergency medical service procedures, and quality of care.

(10) "Online medical direction" means the function of a board-licensed physician or physician assistant or the function of a designee of the physician or physician assistant in providing direction, advice, or orders to an emergency care provider for interfacility emergency medical transportation, ~~or~~ out-of-hospital, emergency medical, or community-integrated health care, *or patient care within a health care facility* as identified in a plan for offline medical direction.

(11) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) Unless otherwise defined by rule for community-integrated health care, the term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

(12) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(13) "Volunteer emergency care provider" means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides out-of-hospital, emergency medical, or community-integrated health care*, patient care within a health care facility,* or interfacility emergency medical transportation:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical or community-integrated health care as part of the individual's job duties."

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 6, part 2, and the provisions of Title 50, chapter 6, part 2, apply to [section 1].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 295

[HB 603]

AN ACT PROVIDING FOR THE REINSTATEMENT OF PARENTAL RIGHTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING THAT A CHILD PETITIONING FOR REINSTATEMENT OF PARENTAL RIGHTS HAS THE RIGHT TO COUNSEL; AMENDING SECTIONS 41-3-425 AND 41-3-602, MCA; REPEALING SECTION 41-3-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Reinstatement of parental rights.** (1) A child whose parent's rights were terminated under this chapter or a party whose parental rights were terminated under this chapter may petition the court to reinstate parental rights if:

(a) the child was adjudicated a youth in need of care under this chapter;

(b) the child's parent's rights were terminated in a proceeding under this chapter;

(c) the child has not achieved the child's permanency plan or the permanency plan has not been sustained; and

(d) two years have passed since the final order terminating parental rights was entered.

(2) If a parent of a child eligible to petition for reinstatement of parental rights under subsection (1) contacts the department or the child's guardian ad litem regarding reinstatement of parental rights, the department or the guardian ad litem shall notify the child about the child's right to petition for reinstatement of parental rights under this section.

(3) A child filing a petition under this section:

(a) is entitled to representation by counsel; and

(b) shall sign the petition unless good cause exists for not doing so.

(4) (a) If, after considering the parent's fitness and interest in reinstatement of parental rights, the court finds that the best interests of the child may be served by reinstatement of parental rights, the court shall order that a hearing on the merits of the petition be held.

(b) The court shall provide prior notice of a hearing under subsection (4)(a) to:

(i) the department;

(ii) the child's attorney and the child;

(iii) the child's parent whose parental rights are the subject of the petition;

(iv) any parent whose rights have not been terminated;

(v) the child's current foster parent, relative caregiver, guardian, or custodian; and

(vi) if applicable, the child's tribe.

(5) After a hearing, the court shall conditionally grant the petition, reinstating the rights of one or both parents, if the court finds by clear and convincing evidence that:

(a) both the parent and the child consent to the reinstatement of parental rights;

(b) in accordance with subsection (6):

(i) the child has not achieved the child's permanency plan and is not likely to imminently achieve the child's permanency plan; or

(ii) the child has not sustained the child's permanency plan; and

(c) in accordance with subsection (7), reinstatement of parental rights is in the child's best interest.

(6) In determining whether the child has achieved the child's permanency plan or is likely to achieve the child's permanency plan, the court shall review information provided by the department related to any efforts to achieve the permanency plan, including efforts to achieve adoption or a permanent guardianship.

(7) In determining whether reinstatement of parental rights is in the child's best interests, the court shall consider but is not limited to the following:

(a) whether the parent whose rights are to be reinstated is a fit parent and has remedied the parent's deficiencies documented in the record of the termination proceedings and in the termination order;

(b) whether the child is able to express the child's preference;

(c) whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety;

(d) whether the benefit to the child of reinstatement of parental rights outweighs the potential lack of permanency for the child; and

(e) whether other material changes in circumstances exist that would warrant reinstating parental rights.

(8) (a) If the court conditionally grants the petition under subsection (7), the proceedings must be continued for 6 months and a temporary order of reinstatement must be entered.

(b) Except as provided in subsection (8)(c), during this time:

(i) the child must be placed in the parent's custody; and

(ii) the department shall develop a reunification plan for the child and shall provide transition services to the family, as appropriate.

(c) If at any time the department alleges that the child has been abused or neglected by the parent, the department shall petition the court for an order dismissing the temporary reinstatement of parental rights. The court shall grant the petition based on a preponderance of the evidence that the child has been abused or neglected.

(9) (a) After the child has successfully been placed with the parent for 6 months, the court shall enter a final order reinstating parental rights that restores all rights, powers, privileges, immunities, duties, and obligations of the parent to the child, including those relating to custody, control, and, subject to subsection (9)(c), support of the child. The court shall direct the clerk of court to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(b) The reinstatement of parental rights pursuant to subsection (9)(a) does not vacate or otherwise affect the validity of the original termination order.

(c) A parent whose rights are reinstated under subsection (9)(a) may not be held liable for any child support owed to the department or costs of other services provided to the child for the period beginning on the date parental rights were terminated and ending on the date parental rights were reinstated.

(10) This section may not be construed to create a cause of action against the state or its employees concerning the original termination.

**Section 2.** Section 41-3-425, MCA, is amended to read:

"**41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; ~~and~~

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act*; and*

*(d) any child petitioning for reinstatement of parental rights pursuant to [section 1].*

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

**Section 3.** Section 41-3-602, MCA, is amended to read:

"**41-3-602. Purpose.** *(1)* This part provides procedures and criteria by which the parent-child legal relationship*:*

*(a)* may be terminated by a court if the relationship is not in the best interest of the child*; or*

*(b) may be reinstated by a court when permanency has not been achieved for a child, the child and parent desire reinstatement, and reinstatement is in the best interest of the child.*

*(2)* The termination of the parent-child legal relationship provided for in this part is to be used in those situations when there is a determination that a child is abused or neglected, as defined in 41-3-102."

**Section 4. Repealer.** The following section of the Montana Code Annotated is repealed:

41-3-601. Short title.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 296

[HB 598]

AN ACT PROHIBITING THE USE OF A RANKED-CHOICE VOTING METHOD TO ELECT OR NOMINATE A CANDIDATE FOR LOCAL, STATE, OR FEDERAL OFFICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Prohibition on ranked-choice voting methods -- definition.** (1) An election conducted under Title 13 or under Title 20 may not use a ranked-choice voting method to determine the election or nomination of a candidate to a local, state, or federal office.

(2) For the purposes of this section, "ranked-choice voting method" means a voting method that allows voters to rank candidates for an office in order of preference and has ballots cast to be tabulated in multiple rounds following the elimination of a candidate until one candidate reaches a majority of the votes.

**Section 2. 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].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 297

[HB 586]

AN ACT PROVIDING PRIORITY TO LOCAL MUSEUMS FOR DEPOSITS OF PALEONTOLOGICAL REMAINS ON STATE LANDS; AND AMENDING SECTION 22-3-432, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 22-3-432, MCA, is amended to read:

"**22-3-432. Antiquities permits.** (1) A person may not excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided a permit may not be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of the investigations, containing relevant maps, documents, drawings, and photographs, must be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other *approved* institutions within the state or *may be* loaned to qualified institutions outside the state~~, unless otherwise provided for in the antiquities permit~~. *These procedures must consider the needs of approved in-state museums or institutions that are most proximate to excavation. For fossils that don't meet scientific criteria as significant, approval may not be unreasonably withheld.*

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes."

Approved April 26, 2023

# CHAPTER NO. 298

[HB 582]

AN ACT EXTENDING THE TERMINATION DATE FOR THE COMMUNITY HEALTH AIDE PROGRAM; AMENDING SECTION 7, CHAPTER 412, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7, Chapter 412, Laws of 2019, is amended to read:

**"Section 7. Termination.** [This act] terminates ~~September 30 2023~~ *September 30, 2025*."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 299

[HB 578]

AN ACT REVISING ALCOHOL LAWS TO ALLOW A LICENSEE WITH A CATERING ENDORSEMENT TO SELL LIQUOR IN ORIGINAL PACKAGING FOR OFF-PREMISES CONSUMPTION DURING A LIQUOR MANUFACTURING INDUSTRY-SPECIFIC EVENT SPONSORED BY A LICENSED DISTILLER; PROVIDING UP TO SIX SPECIAL EVENTS A YEAR; AND AMENDING SECTION 16-4-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer -- catering endorsement -- competitive bidding -- rulemaking.** (1) (a) Except as provided in subsection (3), a license may be transferred to a new owner and to a location outside the quota area where the license is currently located only when the following criteria are met:

(i) the total number of all-beverages licenses in the current quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within 5 miles of its corporate limits, by more than 43%; or

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(2) When the department determines that a license may be transferred from one quota area to another under subsection (1), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to purchase and transfer a license.

(3) A license within an incorporated quota area may be transferred to a new owner and to a new unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(4) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(5) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event on premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. ~~The~~ *Except as provided in subsection (5)(j) of this section, the* alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (5) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) A catering endorsement issued for the purpose of selling and serving liquor or beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve liquor or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(i) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

*(j) A distiller licensed under 16-4-312 may apply to the department to sponsor a catered event with a licensee with a catering endorsement under this subsection (5) that allows for the sale of liquor in original packaging for off-premises consumption at a liquor manufacturing industry-specific event. The department may only approve six of these events per year.*

(6) The department may adopt rules to implement this section."

Approved April 26, 2023

# CHAPTER NO. 300

[HB 573]

AN ACT EXEMPTING ALL CONTRACTS MADE UNDER THE MONTANA COMMUNITY SERVICE ACT FROM THE MONTANA PROCUREMENT ACT REGARDLESS OF THE DOLLAR AMOUNT OF THE CONTRACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the Montana Community Service Act promotes public service that provides a benefit to the state; and

WHEREAS, the Montana Community Service Act asks state agencies, including the Department of Environmental Quality, the Department of Natural Resources and Conservation, the Department of Transportation, and the Department of Fish, Wildlife, and Parks, to develop and implement community service opportunities consistent with the mission and function of each agency; and

WHEREAS, the Montana Community Service Act authorizes state agencies engaged in community service to execute contracts or cooperative agreements; and

WHEREAS, the current restriction on contracts valued less than $12,501 under the Montana Community Service Act being exempted from the Montana Procurement Act creates obstacles to the development and implementation of contracts for community service projects benefiting the state; and

WHEREAS, removing the current restriction and completely exempting contracts under the Montana Community Service Act from the Montana Procurement Act reconciles the intention of these acts to facilitate the development and implementation of community service opportunities consistent with section 90-14-105, MCA, and clarifies that agencies, when operating under the Montana Community Service Act, will be exempted from state procurement requirements.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-4-132, MCA, is amended to read:

"**18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) employment of:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private consultant employed by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(h) the purchase or commission of art for a museum or public display;

(i) contracting under 47-1-121 of the Montana Public Defender Act;

(j) contracting under Title 90, chapter 4, part 11; or

(k) contracting under Title 90, chapter 14, part 1~~, when the total contract value is $12,501 or less~~.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured."

**Section 2. Applicability.** [This act] applies to contracts and cooperative agreements executed on or after [the effective date of this act].

Approved April 26, 2023

# CHAPTER NO. 301

[HB 557]

AN ACT SPECIFYING THAT MONEY FROM THE HEALING AND ENDING ADDICTION THROUGH RECOVERY AND TREATMENT ACCOUNT MAY

BE USED FOR CRISIS STABILIZATION SERVICES; AMENDING SECTION 16-12-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-12-122, MCA, is amended to read:

"**16-12-122. Healing and ending addiction through recovery and treatment account.** (1) There is a healing and ending addiction through recovery and treatment account in the state special revenue fund. The account consists of money transferred to the account pursuant to 16-12-111.

(2) Revenue in the account must be used to provide statewide programs for:

(a) substance use disorder prevention;

(b) mental health promotion; and

(c) crisis, treatment, and recovery services for substance use and mental health disorders. *The services include but are not limited to crisis stabilization services as defined in 53-21-1401 and provided under Title 53, chapter 6, or Title 53, chapter 21, part 14.*

(3) The programs must be designed to:

(a) increase the number of individuals choosing treatment over incarceration;

(b) improve access to, utilization of, and engagement and retention in prevention, treatment, and recovery support services;

(c) expand the availability of community-based services that reflect best practices or are evidence-based;

(d) leverage additional federal funds when available for the healthy Montana kids plan provided for in Title 53, chapter 4, part 11, and the medicaid program provided for in Title 53, chapter 6, for the purposes of this section;

(e) provide funding for programs and services that are described in subsections (2)(a) through (2)(c) and provided on an Indian reservation located in this state; or

(f) provide funding for grants and services to tribes for use in accordance with this section.

(4) (a) An amount not to exceed $500,000, including eligible federal matching sources when applicable, must be used to provide funding for grants and services to tribes for tobacco prevention and cessation, substance use disorder prevention, mental health promotion, and substance use disorder and mental health crisis, treatment, and recovery services.

(b) The department of public health and human services shall manage the programs funded by the special revenue account and shall adopt rules to implement the programs.

(5) The legislature shall appropriate money from the state special revenue account provided for in this section for the programs referred to in this section.

(6) Programs funded under this section must be funded through contracted services with service providers."

**Section 2. Effective date.** [This act] is effective July 1, 2023.

Approved April 26, 2023

# CHAPTER NO. 302

[HB 550]

AN ACT REVISING LAWS RELATED TO THE SALE OF VIDEO GAMBLING MACHINES BY A LICENSED OPERATOR TO ANOTHER LICENSED OPERATOR OR LICENSED MANUFACTURER, DISTRIBUTOR, OR ROUTE OPERATOR; REMOVING THE REQUIREMENT THAT THE LICENSED OPERATOR MUST OBTAIN PERMITS FOR THE MACHINES AND LEGALLY

OPERATE THEM PRIOR TO THE SALE; AMENDING SECTION 23-5-614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-614, MCA, is amended to read:

"**23-5-614. Sale of video gambling machines.** (1) A licensed operator who is not licensed as a manufacturer, distributor, or route operator may sell up to 20 video gambling machines in a calendar year if the operator:

~~(a) had obtained permits for the machines and legally operated them prior to the sale; and~~

~~(b)~~ sells the machines to another licensed operator or to a licensed manufacturer, distributor, or route operator.

(2) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed manufacturer, distributor, route operator, or operator may sell the machines to a licensed manufacturer, distributor, route operator, or operator.

(3) A licensed manufacturer or distributor may sell video gambling machines and associated equipment approved by the department for delivery to any jurisdiction outside of this state if the sale and transportation of the machines or equipment complies with all applicable local, tribal, state, and federal laws and regulations. Prior to the date of the sale, the seller shall notify the department of the terms of the sale, the identities of the seller, purchaser, and person to whom the shipment will be made, the type and number of machines or equipment to be sold, and the method of shipment and provide the department with the approval of the jurisdiction in which the machines or equipment will be received. A person convicted of purposely or knowingly violating this subsection shall be punished as provided in 23-5-162."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2023

# CHAPTER NO. 303

[HB 545]

AN ACT REVISING STATE LAW TO RECOGNIZE THE UNITED STATES SPACE FORCE AS A COMPONENT OF THE UNITED STATES ARMED FORCES; STANDARDIZING THE ORDER IN WHICH ARMED FORCES COMPONENTS ARE LISTED; AND AMENDING SECTIONS 10-2-802, 13-21-102, 20-7-134, 39-29-101, AND 61-3-458, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-2-802, MCA, is amended to read:

"**10-2-802. Definitions.** As used in this part, the following definitions apply:

(1) "Eligible service member" means a service member who meets the criteria established in 10-2-804(2).

(2) "Family member" means the spouse of an eligible service member or a person who is a parent, child, brother, sister, or grandparent of an eligible service member by lineage, adoption, legal guardianship, or marriage.

(3) "United States armed forces" means the active and reserve components of the United States army, marine corps, navy, air force, *space force,* and coast guard."

**Section 2.** Section 13-21-102, MCA, is amended to read:

"**13-21-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Covered voter" means:

(a) a uniformed-service voter or an overseas voter who is registered to vote in Montana;

(b) a uniformed-service voter whose voting residence is in Montana and who otherwise satisfies Montana's voter eligibility requirements;

(c) an overseas voter who, before leaving the United States, was last eligible to vote in Montana and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements;

(d) an overseas voter who, before leaving the United States, would have been last eligible to vote in Montana had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements.

(2) "Dependent" means an individual recognized as a dependent by a uniformed service.

(3) "Digital signature" means the certificate-based digital identification code issued to qualified personnel by the U.S. department of defense as part of the common access card or its successor.

(4) "Federal postcard application" means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. 20301(b)(2).

(5) "Federal write-in absentee ballot" means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. 20303.

(6) "Military-overseas ballot" means:

(a) a federal write-in absentee ballot;

(b) an absentee ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or

(c) a ballot cast by a covered voter in accordance with this chapter.

(7) "Overseas voter" means a United States citizen who resides outside the United States who would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(9) "Uniformed service" means:

(a) active and reserve components of the army, *marine corps,* navy, air force, ~~marine corps~~ *space force*, or coast guard of the United States;

(b) the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States; or

(c) the national guard and state militia.

(10) "Uniformed-service voter" means an individual who is qualified to vote and is:

(a) a member of the active or reserve components of the army, *marine corps,* navy, air force, ~~marine corps~~ *space force*, or coast guard of the United States who is on active duty;

(b) a member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;

(c) a member of the national guard or state militia in activated status; or

(d) a spouse or dependent of a member referred to in this subsection (10).

(11) "United States", used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(12) "Voter registration application" means the form approved by the secretary of state that an elector may use to register to vote in Montana."

**Section 3.** Section 20-7-134, MCA, is amended to read:

"**20-7-134. Access to public high school campuses -- definition.** (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, "armed forces" means the United States army, ~~air force~~ *marine corps*, navy, ~~marines~~ *air force, space force*, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services."

**Section 4.** Section 39-29-101, MCA, is amended to read:

"**39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

(a) United States army, *marine corps,* navy, air force, ~~marine corps~~ *space force*, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

(a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or

(b) who has received a purple heart medal.

(3) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

(i) a state or local elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(v) engagement as an independent contractor or employment by an independent contractor; or

(vi) a position occupied by a student intern, as defined in 2-18-101.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

**Section 5.** Section 61-3-458, MCA, is amended to read:

"**61-3-458. Special plates for military personnel, veterans, spouses, and gold star families.** (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) As provided in subsection (3), family members of a member of the U.S. armed forces who are eligible for or who have received:

(i) a "Gold Star Lapel Button" may be issued special gold star family license plates; and

(ii) a "Next-of-Kin of Deceased Personnel Lapel Button" may be issued special next-of-kin license plates.

(c) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military, veteran, gold star family, or next-of-kin license plates may not be issued for a quadricycle, semitrailer, or pole trailer. Special military, veteran, gold star family, or next-of-kin license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section. Special military or veteran license plates may be issued for a motorcycle pursuant to 61-3-414.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, *United States marine corps,* United States navy, United States air force, ~~United States marine corps~~ *United States space force*, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and:

(a) providing a department of defense form 3 (DD Form 3) or its successor or documents showing the person's eligibility for a "Gold Star Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive or who has received a "Gold Star Lapel Button" as provided in Public Law 534, 89th congress, may be issued special license plates inscribed with a blue-bordered gold star with the words "Gold Star Family" inscribed beneath the registration number; or

(b) providing a department of defense form 1300 (DD Form 1300) or its successor or documents showing the person's eligibility for a "Next-of-Kin of Deceased Personnel Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive or who has received a "Next-of-Kin of Deceased Personnel Lapel Button" as provided in 32 CFR 578.63 may be issued special next-of-kin license plates inscribed as determined by the department in consultation with the Montana department of military affairs.

(4) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (4) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, *United States marine corps,* United States navy, United States air force, ~~United States marine corps~~ *United States space force*, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) A veteran who qualifies under subsections (4)(b) and (4)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (4)(b).

(5) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (4)(b) or the combination plates provided for in subsection (4)(i).

(6) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Approved April 26, 2023

# CHAPTER NO. 304

[HB 519]

AN ACT AUTHORIZING THE USE OF DIGITAL DRIVER'S LICENSES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 61-5-116 AND 61-14-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-5-116, MCA, is amended to read:

"**61-5-116. License to be carried and exhibited on demand.** *(1)* A licensee must have the licensee's driver's license in the licensee's immediate possession at all times when operating a motor vehicle and shall display the license upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, a person charged with violating this section may not be convicted if the person produces in court or the office of the arresting officer a driver's license issued to the person and valid at the time of the person's arrest.

*(2) (a) Beginning September 1, 2025, a licensee may meet the requirements of subsection (1) by having a digital or hard copy version of the licensee's driver's license in the licensee's immediate possession at all times when operating a motor vehicle and displaying the license upon demand.*

*(b) Only a digital or hard copy version of the licensee's driver's license issued and authorized by the department is sufficient to meet the requirements of this section.*"

**Section 2.** Section 61-14-201, MCA, is amended to read:

"**61-14-201. Rulemaking authority -- driver's licenses and identification cards.** (1) The department may adopt rules to administer and enforce the provisions of Title 61, chapter 5.

(2) The department may adopt rules governing acceptable methods of proof of identification, including name, date of birth, and authorized presence, that an individual must submit when applying for a license or identification card, including a new, renewal, or replacement license or identification card.

(3) The department may adopt rules governing the 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.

(4) The department shall adopt rules governing the calculation of grace periods for renewals and the calculation of other time periods established by statute or federal regulation.

(5) The department may adopt rules governing the 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.

(6) The department shall adopt rules to set the standards for driver license examinations and reexaminations.

(7) The department may adopt rules to set the standards for photographs, certifications, and signature requirements for the issuance of driver's licenses.

(8) The department shall adopt rules establishing the functional abilities and skills required to exercise ordinary and reasonable control to safely operate a motor vehicle. The rules:

(a) must include operational restrictions based on the driver's ability and skills;

(b) may direct the design of one or more types of skills tests. 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.

(c) 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.

(9) The department shall adopt rules establishing vision requirements for a person to safely operate a motor vehicle. The rules:

(a) must include the minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licenses and operational restrictions based on the visual acuity of an applicant or licensee, including the use of bioptic lenses; and

(b) may include minimum field of vision and depth perception requirements for both unrestricted and restricted licenses.

(10) The rules in subsections (8) and (9):

(a) may take into consideration any nationally recognized standards or recommended practices or standards of other jurisdictions for assessment of a person's functional abilities and skills;

(b) 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

(c) except as provided in 61-5-105, may not use a person's age or a person's physical or mental disability, limitation, or condition as a justification for the denial of a license.

(11) The department shall adopt rules governing the issuance of a restricted learner license, including when the department may issue a restricted learner license to allow for a driver to practice driving skills.

(12) The department shall adopt rules governing the issuance of a hardship license to a person who is at least 13 years of age and because of individual hardship needs a restricted driver's license, including a person who holds a learner license under 61-5-106. The department must consider, among other criteria, whether a hardship license is needed because the applicant's parent or guardian is not available to accompany the licensee, whether due to employment or circumstances related to the operation of a farm or ranch or because the parent or guardian does not hold a valid driver's license, and the licensee is required to drive to the licensee's school bus stop.

(13) The department may adopt rules governing probationary licenses, including:

(a) issuance to a person whose license has been suspended or revoked or whose license is subject to a discretionary suspension or revocation;

(b) the establishment of restrictions placed on a probationary license;

(c) the expiration of a probationary license;

(d) the cancellation of a probationary license for violating the restrictions on the probationary license or for another law violation; and

(e) the issuance, withdrawal, and monitoring of a restricted-use driving permit issued under 61-5-232.

(14) The department may adopt rules governing the requirements for a veteran designation on a driver's license or identification card.

(15) The department may adopt rules governing the issuance of a replacement driver's license.

(16) The department may adopt rules governing the certification process for cooperative driver testing program instructors.

(17) The department may adopt rules for the implementation of online driver's license renewal.

(18) The department shall adopt rules governing the issuance, renewal, and cancellation of identification cards that align with the proof of identity, residence, and authorized presence standards for a driver's license.

(19) The department may adopt rules for determining moving violations.

(20) The department may adopt rules for charging a fee for not appearing at a scheduled commercial skills test or motorcycle test and for the waiver of the fee for good cause shown.

(21) The department shall adopt rules governing restrictions for personal communication limitations and other medical information that would be helpful to a peace officer during a traffic stop.

(22) The department may adopt rules governing the conditions under which an applicant is eligible to receive a driver's license or identification card by expedited service and to set the fee for expedited service.

*(23) (a) By September 1, 2025, the department shall establish a program that allows every qualifying applicant for a driver's license the option to acquire a digital version of the applicant's driver's license in addition to the physical version issued pursuant to 61-5-116.*

*(b) By July 1, 2025, the department shall adopt rules to implement subsection (23)(a), including but not limited to issuance requirements, specifications, security and privacy protections, and allowable uses associated with the digital driver's license.*

~~(23)~~*(24)* The department may adopt rules to implement any other provision of this title."

Approved April 26, 2023

# CHAPTER NO. 305

[HB 504]

AN ACT REQUIRING SCHOOL DISTRICT BOARDS OF TRUSTEES TO ADOPT A GRIEVANCE POLICY; PROVIDING PARAMETERS FOR THE GRIEVANCE POLICY; AMENDING SECTION 20-3-323, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-323, MCA, is amended to read:

"**20-3-323. District policy and record of acts.** (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; ~~and~~

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction*; and*

*(c) adopt a grievance policy that provides for informal and formal resolutions of a complaint, informs a grievant about the grievance policy, provides a printed version of the grievance policy on request, and accepts for filing a formal complaint submitted within 30 days of the completion of an informal resolution.*

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted."

**Section 2. Effective date.** [This act] is effective July 1, 2023.

Approved April 26, 2023

# CHAPTER NO. 306

[SB 99]

AN ACT PROVIDING FOR A YOUTH HEALTH PROTECTION ACT; PROHIBITING CERTAIN MEDICAL AND SURGICAL TREATMENTS TO TREAT MINORS WITH GENDER DYSPHORIA; PROHIBITING PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES FROM BEING USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL WHO VIOLATES THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE OF ACTION; PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND PROVIDING DEFINITIONS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Youth Health Protection Act".

**Section 2. Purpose.** The purpose of [sections 1 through 6] is to enhance the protection of minors and their families, pursuant to Article II, section 15, of the Montana constitution, from any form of pressure to receive harmful, experimental puberty blockers and cross-sex hormones and to undergo irreversible, life-altering surgical procedures prior to attaining the age of majority.

**Section 3. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Female" means a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for the purposes of [sections 1 through 6].

(2) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female. An individual's gender may or may not align with the individual's sex.

(3) "Gender dysphoria" is the condition defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.

(4) "Health care professional" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of the person's profession.

(5) "Male" means a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male for purposes of [sections 1 through 6].

(6) "Mental health professional" means a person who is licensed to diagnose and treat mental health conditions in this state.

(7) "Minor" means an individual under 18 years of age.

(8) "Physician" means a person who is licensed to practice medicine in this state.

(9) "Sex" means the organization of body parts and gametes for reproduction in human beings and other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types of gametes. The sexes are determined by the biological and genetic indication of male or female, including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, behavioral, social, cultural, chosen, or subjective experience of gender.

(10) "Social transitioning" means acts other than pharmaceutical or surgical interventions that are offered as treatment to a minor for the purpose of the minor presenting as the opposite sex or an identity other than the minor's sex, including the changing of a minor's preferred pronouns or dress and the recommendation to wear clothing or devices, such as binders, for the purpose of concealing a minor's secondary sex characteristics.

**Section 4. Prohibitions.** (1) (a) Except as provided in subsection (1)(c), a person may not knowingly provide the following medical treatments to a female minor to address the minor's perception that her gender or sex is not female:

(i) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular protheses, subcutaneous mastectomy, voice surgery, or pectoral implants;

(ii) supraphysiologic doses of testosterone or other androgens; or

(iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female minors.

(b) Except as provided in subsection (1)(c), a person may not knowingly provide the following medical treatments to a male minor to address the minor's perception that his gender or sex is not male:

(i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction, or gluteal augmentation;

(ii) supraphysiologic doses of estrogen; or

(iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of testosterone or delay or suppress pubertal development in male minors.

(c) The medical treatments listed in subsections (1)(a) and (1)(b) are prohibited only when knowingly provided to address a female minor's perception that her gender or sex is not female or a male minor's perception that his gender or sex is not male. Subsections (1)(a) and (1)(b) do not apply for other purposes, including:

(i) treatment for a person born with a medically verifiable disorder of sex development, including:

(A) a person born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue; and

(B) a person whom a physician has otherwise diagnosed with a disorder of sexual development in which the physician has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; and

(ii) treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by a medical treatment listed in subsection (1)(a) or (1)(b), whether or not the medical treatment was performed in accordance with state and federal law and whether or not funding for the medical treatment is permissible under state and federal law.

(2) If a health care professional or physician violates subsection (1)(a) or (1)(b):

(a) the health care professional or physician has engaged in unprofessional conduct and is subject to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state. That discipline must include suspension of the ability to administer health care or practice medicine for at least 1 year.

(b) parents or guardians of the minor subject to the violation have a private cause of action for damages and equitable relief as the court may determine is justified. The court may also award reasonable attorney fees and court costs to a prevailing party.

(3) Public funds may not be directly or indirectly used, granted, paid, or distributed to any individual, entity, or organization for the purposes of providing the medical treatments prohibited in subsection (1)(a) or (1)(b).

(4) Any individual or entity that receives state funds to pay for or subsidize the treatment of minors for psychological conditions, including gender dysphoria, may not use state funds to promote or advocate the medical treatments prohibited in subsection (1)(a) or (1)(b).

(5) Any amount paid by an individual or entity during a tax year for the provision of the procedures described in subsection (1)(a) or (1)(b) is not tax deductible under state law.

(6) The Montana medicaid and children's health insurance programs may not reimburse or provide coverage for the medical treatments prohibited in subsection (1)(a) or (1)(b).

(7) Except to the extent required by the first amendment to the United States constitution, state property, facilities, or buildings may not be knowingly used to promote or advocate the use of social transitioning or the medical treatments prohibited in subsection (1)(a) or (1)(b).

(8) A health care professional or physician employed by the state or a county or local government may not, while engaged in the official duties of employment, knowingly provide the medical treatments prohibited in subsection (1)(a) or (1)(b).

(9) State property, facilities, or buildings may not knowingly be used to provide the medical treatments prohibited in subsection (1)(a) or (1)(b).

(10) A state employee whose official duties include the care of minors may not, while engaged in those official duties, knowingly provide or promote the medical treatments prohibited in subsection (1)(a) or (1)(b).

(11) The attorney general may bring an action to enforce compliance with this section.

**Section 5 Private cause of action for subsequent harm.** (1) Any health care professional or physician who provides the medical treatments prohibited in [section 4(1)(a) or (1)(b)] is strictly liable to that person if the medical treatment or the after-effects of the medical treatment result in any injury, including physical, psychological, emotional, or physiological harms, within the next 25 years.

(2) Except as provided in subsection (3), a person who suffers an injury described in subsection (1) or the person's legal guardian or estate may bring a civil action with respect to the injury or for any violation of [section 4] within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the medical treatment and the injury against the offending health care professional or physician in a court of competent jurisdiction for:

(a) declaratory or injunctive relief;

(b) compensatory damages, including but not limited to pain and suffering, loss of reputation, loss of income, and loss of consortium, including the loss of expectation of sharing parenthood;

(c) punitive damages;

(d) any other appropriate relief; and

(e) attorney fees and costs.

(3) (a) If, at the time the person subjected to medical treatment discovers the injury and the causal relationship between the medical treatment and the injury, the person is under legal disability, the limitation period in subsection (2) does not begin to run until the removal of the disability.

(b) The limitation period in subsection (2) does not run during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the health care professional or physician who provided the medical treatment described in subsection (1) or by any person acting in the interest of the health care professional or physician.

(4) A health care professional or physician may not be indemnified for potential liability under this section.

(5) The attorney general may bring an action to enforce compliance with this section.

(6) This section does not deny, impair, or otherwise affect any right or authority of the attorney general, the state, or any agency, officer, or employee

of the state, acting under any law other than this section, to institute or intervene in any proceeding.

**Section 6. Prohibited insurance coverage.** A professional liability insurance policy issued to a health care professional or physician may not include coverage for damages assessed against the health care professional or physician who provides any medical treatment prohibited in [section 4(1)(a) or (1)(b)].

**Section 7. Medical or surgical transition for minors.** Failure of a health care professional, mental health professional, or physician to adhere to [section 4] constitutes unprofessional conduct, with a mandatory minimum suspension of the ability to practice the person's profession for 1 year.

**Section 8. Prohibited reimbursement or coverage.** Pursuant to [section 4], the Montana medicaid program may not reimburse or provide coverage for any medical treatment prohibited in [section 4(1)(a) or (1)(b)].

**Section 9. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 7].

(3) [Section 8] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 8].

**Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 28, 2023

# CHAPTER NO. 307

[SB 8]

AN ACT REVISING LAWS RELATED TO PERSONALIZED AND TRANSFORMATIONAL LEARNING; DEFINING PROFICIENCY-BASED LEARNING; REVISING ELIGIBILITY REQUIREMENTS FOR TRANSFORMATIONAL LEARNING AID PAYMENTS; AMENDING SECTIONS 20-7-1601 AND 20-7-1602, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-7-1601, MCA, is amended to read:

"**20-7-1601. Forms of personalized learning -- legislative intent.** *(1)* The legislature finds and declares pursuant to Article X, section 1, of the 1972 Montana constitution that forms of personalized learning authorized under Montana law, including but not limited to work-based learning pursuant to 20-7-1510, ~~proficiency under 20-9-311,~~ *proficiency-based learning as defined in subsection (2) of this section*, determinations of course equivalency by an elected board of trustees under 20-3-324(18), offsite instruction under 20-7-118, and transformational learning, are appropriate means of fulfilling the people's goal of developing the full educational potential of each person. The provision of and participation in forms of personalized learning under this part and in compliance with accreditation standards of the board of public education are constitutionally compliant and protected. The legislature declares that

any public or private regulation that discriminates against a district or pupil participating in forms of personalized learning referenced in this section is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution.

*(2) As used in this title, unless the context clearly indicates otherwise, the following definitions apply:*

*(a) "Proficiency" means a measure of competence that is demonstrated through application in a performance assessment.*

*(b) "Proficiency-based learning" means an education system in which student progress is based on a student's demonstration of competence rather than on the basis of seat time or the age or grade level of the student.*"

**Section 2.** Section 20-7-1602, MCA, is amended to read:

"**20-7-1602. (Temporary) Incentives for creation of transformational learning programs.** (1) (a) A school district as defined in 20-6-101 that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (4) is eligible for a 4-consecutive-year provision of the transitional funding and flexibilities in subsections (5) and (6).

(b) A school district may be qualified by the board of public education for no more than one 4-consecutive-year provision of transitional funding and flexibilities in any 8-year period.

(2) To qualify for the transitional funding and flexibilities in subsections (5) and (6), the board of trustees of a district shall submit an application that has been approved by motion of the board of trustees and signed by the presiding officer to the board of public education for approval of a transformational learning program on a form provided by the superintendent of public instruction. The school board's application must:

(a) identify the number of full-time equivalent educators meeting the criteria of 20-9-327(3) who will participate in the district's transformational learning program, with full-time equivalence calculated and reported by the district based on the planned portion of each qualifying educator's full-time equivalent assignment that is dedicated to the district's transformational learning program;

(b) ~~include the district's definition of proficiency within the meaning of that term as used in 20-9-311(4)(d). The definition must not require seat time as a condition or other element of determining proficiency. The definition must be incorporated in the district's policies and must be used for purposes of determining content and course mastery and other progress, promotion from grade to grade, grades, and graduation for pupils enrolled in the district's transformational learning program.~~ *include the district's definition of proficiency within the meaning of the term as used in 20-9-311(4)(d). The definition must be incorporated in the district's policies and must be used for purposes of determining content and course proficiency and other progress, promotion from grade to grade, grades, and graduation for pupils enrolled in the district's transformational learning program. The district must also describe the district's plans for the implementation of proficiency-based learning as defined in 20-7-1601; and*

(c) include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:

(i) develop a transformational learning plan for each participating pupil that honors individual interests, passions, strengths, needs, and culture and that is rooted in relationships with teachers, family, peers, and community members;

(ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections;

(iii) provide effective professional development to assist employees in transitioning to a transformational learning model; and

(iv) ensure equality of educational opportunity to participate by all pupils of the district.

(3) The board of public education shall establish by rule the opening and closing dates for receipt of applications and annual reports.

(4) The board of public education shall:

(a) on an annual basis, qualify districts that submit an application meeting, *in the determination of the board or the board's designee,* the requirements of subsection (2) for the funding in subsection (5) and the flexibilities in subsection (6) until the annual appropriation is exhausted, after which further applications, including first-time applications and annual reports requesting an expansion of a previously approved plan, are to be deferred for consideration in a subsequent year, in the order of a lottery system draw, if and when additional funds become available for distribution. The lottery system shall assign every first-time application or request for expansion of a previously approved plan a number that will be placed into a lottery system draw that will be done by a third party. The applications will be assigned a position in the order in which the numbers are drawn. The drawing will continue until all districts are on the qualification list for the current year funding or deferred for consideration in a subsequent year.

(b) require each participating school district to submit an annual report demonstrating, *in the determination of the board or the board's designee,* continued qualification for funding under this section and including a report of progress toward measurable objectives under the school district's transformational learning plan. The school district shall include any decrease or requested increase in the number of participating full-time equivalent educators under subsection (2)(a) for adjustments to its funding. Any increase in funding based on requested increased levels of participation under subsection (2)(a) must be determined in the year in which the request for a funding increase is received and augmented with a lottery system among all first-time applications and annual reports requesting an expansion of a previously approved plan and must be contingent on the availability of funds within any appropriation of the legislature. An application deferred for consideration in a subsequent year due to lack of funding must be annually updated each year after more than 1 full fiscal year has passed from the date of original submission of the application in order for the application to retain its priority by original date received.

(c) report in accordance with 5-11-210 to the education interim committee on the progress made by districts as submitted in the annual report and strategic plan operating under approved and funded transformational learning plans.

(5) (a) For a period of 4 consecutive fiscal years following the fiscal year in which a district is qualified by the board of public education and contingent on ~~continued compliance with~~ *satisfying the* annual reporting requirements under subsection (4), the superintendent of public instruction shall provide a transformational learning aid payment to the district equivalent to 50% of the quality educator payment defined in 20-9-306 from the immediate prior fiscal year multiplied by the number of the district's full-time equivalent educators reported under subsection (2)(a) of this section.

(b) The payment under this subsection (5) must be distributed directly to the school district's flexibility fund established under 20-9-543 by October 1 of

each year of funding by the superintendent of public instruction. The money must be expended by the district only for the purposes set forth in the district's approved transformational learning program *and within 2 years of the date of distribution*.

(c) A school district may not receive more than 25% of the total amount of payments made under this subsection (5).

(6) During each year that a school district remains qualified for funding under subsection (5), the district's trustees may:

(a) if the obligations of transparency set forth in 20-9-116 are met, levy an annual permissive property tax not to exceed 100% of any funds distributed to the district under subsection (5). Proceeds of the levy must be deposited in the district's flexibility fund established under 20-9-543 and must be expended by the district only for the purposes of the district's approved transformational learning plan.

(b) transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to the district's flexibility fund.

(7) (a) Any funds transferred pursuant to subsection (6)(b) may be expended by the district solely for the purposes of implementing the district's approved transformational learning plan. Any transfers of funds are not considered expenditures to be applied against budget authority.

(b) Any transfers that are not expended for the purposes of implementing the district's approved transformational learning plan within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(c) The intent of subsection (6)(b) and this subsection (7) is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(8) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include transformational learning aid as defined in subsection (9).

(9) For the purposes of this title, the following definitions apply:

(a) "Transformational learning" means a flexible system of pupil-centered *and proficiency-based* learning that is designed to develop the full educational potential of each pupil that:

(i) is customized to address each pupil's strengths, needs, and interests;

~~(ii) includes continued focus on each pupil's proficiency over content;~~ and

~~(iii)~~*(ii)* actively engages each pupil in determining what, how, when, and where each pupil learns.

(b) "Transformational learning aid" means 50% of the quality educator payment defined in 20-9-306 multiplied by 10% of the statewide number of full-time equivalent educators from the fiscal year immediately preceding the year to which distribution of transformational aid applies calculated as provided in 20-9-327. (Terminates June 30, 2027--sec. 7, Ch. 402, L. 2019.)"

**Section 3. Transition.** The board of public education or the board's designee shall review the applications of school districts with first-time applications that are unfunded and on the waiting list on [the effective date of this act] to determine whether the district's application meets the requirements under 20-7-1602(2) as amended by [this act]. If a district's application does not meet the requirements, the board shall remove the district from the waiting list. A district removed from the waiting list may reapply.

**Section 4. Effective date.** [This act] is effective July 1, 2023.

Approved May 1, 2023

# CHAPTER NO. 308

[SB 23]

AN ACT REMOVING THE DEPARTMENT OF REVENUE FROM THE CONDOMINIUM DECLARATION RECORDING PROCESS; REQUIRING A COUNTY TO APPROVE CONDOMINIUM DECLARATION RECORDINGS; AND AMENDING SECTION 70-23-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-23-304, MCA, is amended to read:

"**70-23-304. Declaration to be approved by ~~department of revenue~~ *county* before recording.** Before a declaration may be recorded in the county in which the property is located, it must be approved by the ~~department of revenue~~ *county*. A declaration must be approved unless:

(1) the name does not comply with 70-23-303; and

(2) all taxes and assessments due and payable have not been paid."

Approved May 1, 2023

# CHAPTER NO. 309

[SB 42]

AN ACT REVISING APPLICATIONS FOR EASEMENTS ON STATE TRUST LANDS; MODIFYING APPLICATION REQUIREMENTS FOR EXISTING FACILITIES; EXEMPTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM ENVIRONMENTAL REVIEW AND HISTORIC PRESERVATION REVIEW FOR CERTAIN EXISTING EASEMENT PURPOSES; AMENDING SECTIONS 77-2-101, 77-2-102, 77-2-103, AND 77-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 77-2-101, MCA, is amended to read:

"**77-2-101. Easements for specific uses.** (1) Upon proper application as provided in ~~77-2-102~~ *77-2-102(1) through (5)*, the board may grant easements on state lands for the following purposes:

(a) schoolhouse sites and grounds;

(b) public parks;

(c) community buildings;

(d) cemeteries;

(e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant easements on state lands for the following purposes:

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ~~ditch~~ *canal, ditch, flume, aqueduct, pipe*, reservoir, railroad, private road, ~~or telegraph or~~ telephone line, *water conveyance for irrigation purposes,* or any other public use as defined in 70-30-102;

(b) any private building or private sewage system that encroaches on state lands; ~~or~~

(c) *pursuant to 77-1-1112 or 77-1-1115,* the use of the bed of a navigable river ~~pursuant to 77-1-1112 or 77-1-1115~~*; or*

*(d) pursuant to 77-2-102(6), private access roads, county roads, and utility facilities constructed on state lands prior to October 1, 1997.*"

**Section 2.** Section 77-2-102, MCA, is amended to read:

"**77-2-102. Application for easement -- *survey exemptions*.** (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) through (5), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted.

(5) (a) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way.

(b) The application provided for in subsection (5)(a) must be accompanied by electronic global positioning system data in the Montana coordinate system, *the* easement location depicted on a topographical map to a scale of 1:24,000, easement coordinates, and the quantity of land taken in each quarter-quarter section.

*(6) (a) The department may waive survey requirements for rights-of-way or easements provided for in 77-2-101(2)(d) when there is sufficient information to define the boundaries of the right-of-way or easement to record the right-of-way or easement.*

*(b) An application for a private access road to private property must include:*

*(i) a description of appurtenant private lands historically accessed by the access road;*

*(ii) aerial photographs or images by an agency of the United States government dated prior to October 1, 1997, that depict the access road; and*

*(iii) easement location depicted on a topographical map to a scale of 1:24,000.*

*(c) An application for an existing county road must include:*

*(i) documentation establishing the road pursuant to Title 7, chapter 14, part 26;*

*(ii) aerial photographs or images by an agency of the United States government dated prior to October 1, 1997, that depict the county road; and*

*(iii) easement location depicted on a topographical map to a scale of 1:24,000.*

*(d) An application for an existing public utility infrastructure must include:*

*(i) evidence of installation prior to October 1, 1997, through submission of plant staking sheets, photographic evidence of dated infrastructure tags, or similar evidence; and*

*(ii) easement location depicted on a topographical map to a scale of 1:24,000.*"

**Section 3.** Section 77-2-103, MCA, is amended to read:

"**77-2-103. Processing of application.** (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

(3) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the provisions of 77-2-351 related to public entities apply.

*(4) A right-of-way easement issued pursuant to 77-2-102(6) is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.*

*(5) Damages for a lessee's improvements, crops, or leasehold interests are not allowed for right-of-way easement applications made pursuant to 77-2-102(6).*"

**Section 4.** Section 77-2-107, MCA, is amended to read:

"**77-2-107. Involvement of lessee when land subject to prior lease.** (1) ~~Whenever~~ *Except as provided in 77-2-103(5), whenever* any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee for any damages resulting to the lessee's improvements, crops, or leasehold interests.

(2) After the settlement is made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must be filed with the board that the settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If a 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.

(c) The arbitrators may fix reasonable compensation for their services. The compensation must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice may demand.

(e) 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 for judicial review of the decision."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 310

[SB 55]

AN ACT ENTERING THE INTERSTATE MINING COMPACT; AGREEING TO THE REQUIREMENTS OF THE COMPACT; AUTHORIZING THE GOVERNOR TO APPOINT A DESIGNEE TO THE COMMISSION; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO FUND MEMBERSHIP IN THE COMMISSION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Interstate Mining Compact.** This state enacts into law and enters into the Interstate Mining Compact with all states that enact the compact in the form substantially contained in [section 2].

**Section 2. Text of Interstate Mining Compact.** The Interstate Mining Compact referred to in [sections 1 through 4] reads as follows:

Article I. Findings and Purposes

(1) The party states find that:

(a) Mining and the contributions of mining to the economy and well-being of every state are of basic significance.

(b) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(c) Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(d) Variables including soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(e) The states are in a position and have the responsibility to assure that mining is conducted in accordance with sound conservation principles and with due regard for local conditions.

(2) The purposes of this compact are to:

(a) Advance the protection and restoration of land, water, and other resources affected by mining.

(b) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.

(c) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(d) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that the use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of the land and other resources.

(e) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II. Definitions

As used in this compact, the term:

(1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but does not include those aspects of deep mining not having significant effect on the surface, and does not include excavation of grading when conducted solely in aid of on-site farming or construction.

(2) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a Territory or Possession of the United States.

Article III. State Programs

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property on that land resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of those operations.

(2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water.

(3) The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.

(4) The prevention, abatement and control of water, air, and soil pollution resulting from mining — present, past, and future.

Article IV. Powers

In addition to any other powers conferred upon the Interstate Mining Commission, established by article V of this compact, the Commission shall have power to:

(1) Study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of the operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

(2) Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.

(3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

(4) Gather and disseminate information relating to any of the matters within the purview of this compact.

(5) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

(6) Consult, upon the request of a party state and within available resources, with the officials of the state in respect to any problem within the purview of this compact.

(7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V. The Commission

(1) There is an agency of the party states to be known as the "Interstate Mining Commission", or "the Commission". The Commission is composed of one commissioner from each party state who is the governor of that state. Pursuant to the laws of the party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and other public and private interests as may be appropriate) in considering problems relating to mining and in discharging the responsibilities

as a Commissioner on the Commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, the governor shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent the governor and act in the governor's place and stead. The designation of an alternate shall be communicated by the governor to the commission as provided in its bylaws.

(2) The commissioner is entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to article IV-3, IV-7, and IV-8 or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph, article V (7), V (8), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor of the action. All other action shall be by a majority of those present and voting: provided that action of the commission is only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest in that property.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, a vice-presiding officer, and a treasurer. The commission shall appoint an executive director and fix the executive director's duties and compensation. The executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and other personnel as the commission designates shall be bonded. The amount or amounts of the bond or bonds is determined by the commission.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of personnel.

(6) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission are eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes steps necessary pursuant to the laws of the United States to participate in a program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits as it deems appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (7) of the article shall be reported in the annual report of the commission. The report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(9) The commission shall adopt bylaws for the conduct of its business and has the power to amend and rescind these bylaws. The commission shall

publish its bylaws in convenient form and file a copy of its bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor, legislature, and advisory body required by article V(1) of each party state a report covering the activities of the commission for the preceding year, and embodying the recommendations made by the commission. The commission may make additional reports as it deems desirable.

Article VI. Advisory, Technical, and Regional Committees

The commission shall establish advisory, technical, and regional committees as it deems necessary, membership on which includes private persons and public officials and shall cooperate with the use and services of any committees and the organizations which the members represent in furthering any of its activities. The committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

Article VII. Finance

(1) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining the values, the commission shall employ available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article V(8) of this compact; provided that the commission takes specific action setting aside the funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under article V(8), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) This compact may not be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any four or more states. After that enactment, this compact becomes effective as to any other state upon its enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal does not take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. A withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of withdrawal.

Article IX. Effect On Other Laws

This compact does not limit, repeal, or supersede any other law of any party state.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance is not affected. If this compact is held contrary to the constitution of any state participating in the compact, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**Section 3. Membership and applicability.** (1) The governor may appoint a designee to serve as the governor's official representative to the compact and to perform all functions in connection with the business of the compact.

(2) Provisions and policies of the Interstate Mining Compact may not be construed to limit, repeal, or supersede any law of the state of Montana.

(3) (a) The governor and the legislature, or agents of either, may inspect the books and accounts of the Interstate Mining Compact Commission at any reasonable time while the state is a member.

(b) A copy of the bylaws of the Interstate Mining Compact Commission must be placed on file with the department of environmental quality and be available for inspection at any reasonable time by the legislature or any interested citizen.

(4) The state of Montana is not liable for the obligations or solvency of:

(a) the retirement system described in article V(6) of the compact; or

(b) a program of employee benefits described in article V(6) of the compact.

(5) As used in article V(1) of the compact, "agency" does not mean an agency of the state of Montana or any political subdivision of the state of Montana.

**Section 4. Expenses.** The department of environmental quality may pay annually out of funds collected from mining fees, abandoned mine land fees and funds, natural resource operations, or from funds granted to the state by the federal office of surface mining reclamation and enforcement, the annual membership dues payable to the Interstate Mining Compact commission for the membership of the state of Montana in that organization.

**Section 5. Codification instruction.** [Sections 1 through 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 1 through 4].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 311

[SB 61]

AN ACT CLARIFYING THE DEFINITION OF ELECTION OFFICIAL; CLARIFYING THE DEFINITION OF "ELECTION WORKER"; CLARIFYING PROHIBITIONS ON INTERFERENCE WITH ELECTION OFFICIALS AND ELECTION WORKERS; AMENDING SECTIONS 13-1-101, 13-35-202, 13-35-203, AND 13-37-234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-1-101, MCA, is amended to read:

"**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the

office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) The term does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) meals and lodging provided by individuals in their private residences for a candidate or other individual;

(iii) the use of a person's real property for a fundraising reception or other political event; or

(iv) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Disability" means a temporary or permanent mental or physical impairment such as:

(a) impaired vision;

(b) impaired hearing;

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(d) impaired mental or physical functioning that makes it difficult for the person to participate in the process of voting.

(13) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(14) (a) "Election administrator" means, except as provided in subsection (14)(b), the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an election communication.

(16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

*(17) "Election official" means an election administrator, election deputy, or election judge.*

*(18) "Election worker" means an individual designated by an election official to perform election support duties.*

~~(17)~~*(19)* (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an electioneering communication.

~~(18)~~*(20)* "Elector" means an individual qualified to vote under state law.

~~(19)~~*(21)* (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in 13-37-220; or

(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) except as provided in subsection ~~(19)~~*(21)*(a)(ii), payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees;

(v) the use of a person's real property for a fundraising reception or other political event; or

(vi) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

~~(20)~~*(22)* "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(21)~~*(23)* "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-1-104.

~~(22)~~*(24)* "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(23)~~*(25)* "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

~~(24)~~*(26)* (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection ~~(24)~~ *(26)*, the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

~~(25)~~*(27)* "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

~~(26)~~*(28)* "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

~~(27)~~*(29)* "Individual" means a human being.

~~(28)~~*(30)* "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(29)~~*(31)* "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(30)~~*(32)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

~~(31)~~*(33)* "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(32)~~*(34)* (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of $250 or less.

(e) A joint fundraising committee is not a political committee.

~~(33)~~*(35)* "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

~~(34)~~*(36)* "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

~~(35)~~*(37)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

~~(36)~~*(38)* "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(37)~~*(39)* "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

~~(38)~~*(40)* "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

~~(39)~~*(41)* "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(40)~~*(42)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(41)~~*(43)* "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(42)~~*(44)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(43)~~*(45)* "Regular school election" means the school trustee election provided for in 20-20-105(1).

~~(44)~~*(46)* "Religious organization" means a house of worship with the major purpose of supporting religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic documents of the organization must list a formal code of doctrine and discipline, and the organization must spend the majority of its money on religious activities such as regular religious services, educational preparation for its ministers, development and support of its ministers, membership development, outreach and support, and the production and distribution of religious literature developed by the organization.

~~(45)~~*(47)* "School election" has the meaning provided in 20-1-101.

~~(46)~~*(48)* "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(47)~~*(49)* "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(48)~~*(50)* "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

~~(49)~~*(51)* "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

~~(50)~~*(52)* "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

~~(51)~~*(53)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(52)~~*(54)* "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of

no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

~~(53)~~*(55)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(54)~~*(56)* "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

~~(55)~~*(57)* "Voter interface device" means a voting system that:

(a) is accessible to electors with disabilities;

(b) communicates voting instructions and ballot information to a voter;

(c) allows the voter to select and vote for candidates and issues and to verify and change selections; and

(d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

~~(56)~~*(58)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 2.** Section 13-35-202, MCA, is amended to read:

"**13-35-202. Conduct of election officials ~~and election judges~~ *or election workers.*** An election officer *official* or ~~judge~~ *election worker* ~~of an election may not~~ *may not*:

(1) deposit in a ballot box a paper ballot that is not marked as official;

(2) examine an elector's ballot before putting the ballot in the ballot box;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-1-116, 13-13-118, 13-13-119, and 13-13-229; or

(6) make a false statement in a certificate regarding affirmation."

**Section 3.** Section 13-35-203, MCA, is amended to read:

"**13-35-203. Interference with *election* officials *or election workers.*** A person who, in any manner, interferes with the *election* ~~officers~~ *officials or election workers* holding an election or conducting a canvass so as to prevent*, obstruct, impair, or hinder* the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302."

**Section 4.** Section 13-37-234, MCA, is amended to read:

"**13-37-234. Religious organization exemptions to be broadly construed.** Pursuant to the first amendment to the United States constitution and to ensure the consistent application of the law, the commissioner shall broadly construe the exemptions concerning religious organizations provided in 13-1-101(9)(b)(iv), (15)(b)(v), ~~(17)(b)(v)~~ *(19)(b)(v)*, and ~~(19)(b)(vi)~~ *(21)(b)(vi)*."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 312

[SB 63]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING LICENSE TERMINOLOGY; REVISING LAWS RELATING TO THE MANUFACTURE OF ALCOHOLIC BEVERAGES FOR PERSONAL USE; AND AMENDING SECTIONS 16-6-101, 16-6-104, 16-6-301, AND 16-6-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-6-101, MCA, is amended to read:

"**16-6-101. Employment of investigators and prosecuting officers.** (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of ~~a liquor~~ *an alcoholic beverage* license and, if applicable, the suitability of a premises or proposed premises to be used in connection with ~~a liquor~~ *an alcoholic beverage* license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement."

**Section 2.** Section 16-6-104, MCA, is amended to read:

"**16-6-104. Unlawful alcoholic beverage -- seizure -- forfeiture.** (1) An investigator or peace officer who finds an alcoholic beverage and who has reasonable cause to believe that the alcoholic beverage was obtained or kept by any person in violation of the provisions of this code may seize and remove the alcoholic beverage and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the alcoholic beverages are, in addition to any other penalty prescribed by this code, forfeited to the state of Montana.

(2) Any ~~beer or wine~~ *alcoholic beverage* that has been shipped into Montana in violation of this code must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages."

**Section 3.** Section 16-6-301, MCA, is amended to read:

"**16-6-301. Transfer, sale, ~~and~~ possession*, and manufacture* of alcoholic beverages -- when unlawful.** (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer purchased from an out-of-state brewery if the person possessing the beer holds a connoisseur's license as provided for in 16-4-901 or possession of table wine purchased from a winery that has a direct shipment endorsement as provided in 16-4-1101;

(d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; ~~or~~

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee*;*

*(g) possession of wine produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5042(a)(2) and regulations implementing that section, including the production of wine, for personal or family use, on premises other than those of the person producing the wine; or*

*(h) active service members shipping personal collections of alcoholic beverages to a military base in this state.*

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

*(5) In accordance with 27 CFR 19.51, manufacturing of liquor for personal or family consumption is prohibited.*"

**Section 4.** Section 16-6-304, MCA, is amended to read:

"**16-6-304. Providing alcoholic beverage to intoxicated person prohibited.** ~~(1) No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.~~

~~(2) No~~ *A* person*, including a licensee and a licensee's agents or employees,* may *not sell, serve, or* give an alcoholic beverage to a person *who is* apparently under the influence of alcohol."

Approved May 1, 2023

# CHAPTER NO. 313

[SB 64]

AN ACT PROVIDING FOR A WRITTEN AGREEMENT TO EXTEND THE STATUTE OF LIMITATIONS ON AN INDIVIDUAL INCOME TAX ASSESSMENT; AMENDING SECTION 15-30-2606, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2606, MCA, is amended to read:

"**15-30-2606. (Temporary) Tolling of statute of limitations -- *consent to extend time to assess tax.*** *(1)* The running of the statute of limitations provided for under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619 or a federal adjustments report required under 15-30-3403 or 15-30-3404, the statute of limitations does not apply until 3 years from the final determination date or the date the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605.

*(2) When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the agreed-on period. If the taxpayer has agreed in writing to extend the time within which the department may propose an additional assessment, the period within which a claim for a refund or credit may be filed or a refund or credit allowed in the event a claim is not filed is automatically extended.*

**15-30-2606. (Effective January 1, 2024) Tolling of statute of limitations -- *consent to extend time to assess tax.*** *(1)* The running of the statute of limitations provided for under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619 or a federal adjustments report required under 15-30-3403 or 15-30-3404, the statute of limitations does not apply until 3 years from the final determination date or the date the amended federal return was filed. If the taxpayer omits from federal gross income, as defined and described in section 61 of the Internal Revenue Code, 26 U.S.C. 61, an amount properly includable as federal gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605.

*(2) When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the agreed-on period. If the taxpayer has agreed in writing to extend the time within which the department may propose an additional assessment, the period within which a claim for a refund or credit may be filed or a refund or credit allowed in the event a claim is not filed is automatically extended.*"

**Section 2. Applicability.** [This act] applies to written agreements to extend the time to propose an additional assessment executed on or after [the effective date of this act].

Approved May 1, 2023

# CHAPTER NO. 314

[SB 65]

AN ACT REVISING THE STATUTE OF LIMITATIONS FOR INCOME TAX REFUNDS AND CREDITS; PROVIDING CONFORMITY WITH THE INTERNAL REVENUE CODE; AMENDING SECTIONS 15-30-2609 AND 15-31-509, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2609, MCA, is amended to read:

"**15-30-2609. Credits and refunds -- period of limitations.** (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after expiration of the period provided by 15-30-2606 and 15-30-2607 or ~~after~~ 1 year from the ~~date of the overpayment or filing~~ *time the tax was paid*, whichever is later, unless before the expiration of the period the taxpayer files a claim for refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 3 years from the due date of the return for the year to which the net operating loss is carried back.

(c) Except for a final federal adjustment required to be reported for federal purposes by taking those adjustments into account in the partnership return for the year of the adjustment, a taxpayer may file a claim for refund or credit of tax on or before the later of:

(i) the expiration of the period provided for in subsection (2)(a); or

(ii) 1 year from the date a federal adjustments report described in 15-30-3403 and 15-30-3404, was due to the department, including any extensions.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by

the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(ii) the overpayment results from the carryback of a net operating loss; or

(iii) the amount of interest is less than $1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-2604, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

**Section 2.** Section 15-31-509, MCA, is amended to read:

"**15-31-509. Periods of limitation.** (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the final determination date or the date an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506 or a federal adjustments report as provided in 15-30-3403 or 15-30-3404, until 3 years after the final determination date or the date the amended federal return was filed.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or ~~after~~ 1 year from the ~~date of the overpayment or filing~~ *time the tax was paid*, whichever is later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed is automatically extended.

(3) Except for final federal adjustments required to be reported for federal purposes by taking those adjustments into account in the partnership return for the year of the adjustment, a taxpayer may file a claim for refund or credit of tax on or before the later of:

(a) the expiration of the period provided for in subsection (2), including any extensions; or

(b) 1 year from the date a federal adjustments report described in 15-30-3403 or 15-30-3404, as applicable, was due to the department, including any extensions.

(4) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

(5) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back remains open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

**Section 3. Effective date.** [This act] is effective October 1, 2023.

**Section 4. Applicability.** [This act] applies to claims for a refund or credit received by the department of revenue on or after [the effective date of this act].

Approved May 1, 2023

# CHAPTER NO. 315

[SB 68]

AN ACT REVISING LAWS RELATED TO CORONER INQUESTS REGARDING DEATHS IN A PRISON OR CORRECTIONAL FACILITY; PROVIDING THAT CORONERS WHO ARE PEACE OFFICERS MAY CONDUCT INQUESTS REGARDING DEATHS IN A PRISON OR CORRECTIONAL FACILITY; AMENDING SECTION 46-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-4-201, MCA, is amended to read:

"**46-4-201. Inquest -- definition -- when held -- how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of a person and is conducted by the coroner before a coroner's jury.

(2) The coroner may hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of a person occurs:

(a) in a prison, jail, or other correctional facility and is not caused by the terminal condition, as defined in 50-9-102, of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional facility because of conviction of a criminal offense. This subsection (2)(a) applies to a death caused by a terminal condition only if the person was under medical care at the time of death.

(b) while a person is being taken into custody or is in the custody of a peace officer or if the death is caused by a peace officer, except when criminal charges have been or will be filed.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest must be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a ~~prison,~~ jail~~, or other correctional facility~~ *operated by or under the jurisdiction of the peace officer*;

(ii) died while in the custody of a peace officer *serving in the same jurisdiction*; or

(iii) was killed by a peace officer *serving in the same jurisdiction*.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner *or peace officer coroner* of ~~a neighboring county~~ *another jurisdiction* to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 316

[SB 76]

AN ACT REMOVING THE REQUIREMENT THAT A PAPER LICENSE OR TAG BE ATTACHED TO A GAME ANIMAL OR TURKEY; ALLOWING FOR A PAPER LICENSE OR TAG TO ACCOMPANY THE CARCASS OF A GAME ANIMAL OR TURKEY; AMENDING SECTIONS 87-3-310, 87-6-305, 87-6-411, AND 87-6-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-3-310, MCA, is amended to read:

"**87-3-310. Transfer of possession of harvested game.** (1) A person licensed to hunt and authorized to possess a carcass of a game animal that requires mandatory department biological inspection or a wolf that requires mandatory department biological inspection may, after validating ~~and attaching~~ the license or tag in accordance with 87-6-411, transfer possession of all or part of that game animal or wolf to any person at any time after leaving the site of the kill, provided a statement of possession has been completed.

(2) A statement of possession must be on a form prescribed by the department and signed by the licensed person and the person or persons receiving possession and must accompany the carcass or portion of carcass presented for inspection.

(3) Upon receipt of game or a part of game, the recipient is authorized and responsible to present the harvested game to the department as required for biological inspection, if applicable, and salvage the edible meat for human consumption, if required by law.

(4) A person may not transfer possession of all or part of a grizzly bear carcass."

**Section 2.** Section 87-6-305, MCA, is amended to read:

"**87-6-305. Unlawful possession of hunting or fishing license or permit.** (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The prohibition in subsection (1) does not apply~~:~~

~~(a)~~ to a person who is carrying or has physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person~~; and~~.

~~(b) when a properly obtained and validated license or permit is attached to a lawfully killed game animal.~~

(3) Except as provided in subsection (4), a person who violates this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and lose the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction."

**Section 3.** Section 87-6-411, MCA, is amended to read:

"**87-6-411. Tagging of game animal offenses.** (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags the department prescribes.

(2) When a person kills a game animal under the license, the person shall, before the carcass is removed from or the person leaves the site of the kill, take physical possession of the game animal by:

(a) electronically validating the license or tag pursuant to rules adopted in accordance with 87-2-119; or

(b) *validating the license or tag by* cutting out ~~from the license or tag~~ the date the animal was killed ~~and attaching the license or tag to the animal~~. A license or tag that is not electronically validated must ~~be:~~

~~(i) completely filled out with the name of the license holder, the license holder's address, and any other information requested on the license or tag; and~~

~~(ii) kept attached to~~ *accompany* the carcass as long as any considerable portion of the carcass remains unconsumed.

(3) When a game animal has been lawfully killed and the proper license or tag is electronically validated or ~~is attached to~~ *accompanies* the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, transferred to another person pursuant to 87-3-310, or transported.

(4) A person ~~may not fail to~~ *shall* keep the license or tag ~~attached to~~ *accompanying* the game animal or portion of the game animal while the animal is possessed by the person unless the license or tag was electronically validated.

(5) A person may not ~~tag a game animal with or electronically validate a license or tag~~ *validate pursuant to subsection (2) a license or tag* that is restricted to a hunting district other than the hunting district where the game animal was killed.

(6) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court."

**Section 4.** Section 87-6-412, MCA, is amended to read:

"**87-6-412. ~~Tagging of turkey~~ *Turkey tagging* offenses.** (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit ~~may not~~:

(a) ~~fail or neglect to attach the tag to the turkey in compliance with instructions on the tag or to~~ *shall validate the tag either* electronically ~~validate the tag~~ in accordance with rules adopted pursuant to 87-2-119 *or by cutting out from the license or tag the date the turkey was killed* prior to the person leaving or the turkey being removed from the site of the kill;

~~(b) fail to validate the tag either electronically or by not filling out or punch marking the tag as required~~;

~~(c)~~*(b)* ~~unless the tag was electronically validated, fail to keep the tag attached while the turkey is possessed by the person~~ *shall keep the license or tag accompanying the turkey while the turkey is in the person's possession unless the license or tag was electronically validated*; ~~or~~ *and*

~~(d)~~*(c) may not* ~~tag a turkey with or electronically~~ validate *pursuant to subsection (1)(a)* a *turkey* license or tag that is restricted to a hunting district other than the hunting district where the turkey was killed.

(2) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 317

[SB 84]

AN ACT REVISING LAWS FOR AIRCRAFT USE IN RELATION TO WILDLIFE AND NATIONAL FOREST LANDS; DEFINING AN AIRCRAFT TO INCLUDE UNMANNED AERIAL VEHICLES AND OTHER AIRBORNE DEVICES FOR THE PURPOSES OF HUNTING, HAZING, HARASSING, AND OTHERWISE INTERACTING WITH WILDLIFE; REMOVING THE OBLIGATION FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PERMIT AIRCRAFT ACTIVITY ON NATIONAL FOREST LAND; AMENDING SECTIONS

87-6-101, 87-6-107, AND 87-6-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-6-101, MCA, is amended to read:

"**87-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

*(3) "Aircraft" means any manned or unmanned aerial vehicle or device that is used or intended to be used for flight in the air.*

~~(3)~~*(4)* (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

~~(4)~~*(5)* "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

~~(5)~~*(6)* "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

~~(6)~~*(7)* "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

~~(7)~~*(8)* "Field trial" has the meaning provided in 87-3-601.

~~(8)~~*(9)* "Fishing" means to take or harvest fish or the act of a person possessing any instrument, article, or substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

~~(9)~~*(10)* (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

~~(10)~~*(11)* "Fur farm" means enclosed land on which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

~~(11)~~*(12)* (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

~~(12)~~*(13)* "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(13)~~*(14)* "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species Perca flavescens (yellow perch); all species of the genus Pomoxis (crappie); and the species Ictalurus punctatus (channel catfish).

~~(14)~~*(15)* "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(15)~~*(16)* "Knowingly" has the meaning provided in 45-2-101.

~~(16)~~*(17)* "Livestock" includes ostriches, rheas, and emus.

~~(17)~~*(18)* "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

~~(18)~~*(19)* "Negligently" has the meaning provided in 45-2-101.

~~(19)~~*(20)* "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(20)~~*(21)* "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(21)~~*(22)* "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

~~(22)~~*(23)* "Person" means an individual, association, partnership, and corporation.

~~(23)~~*(24)* "Possession" has the meaning provided in 45-2-101.

~~(24)~~*(25)* "Predatory animal" means coyote, weasel, skunk, and civet cat.

~~(25)~~*(26)* "Purposely" has the meaning provided in 45-2-101.

~~(26)~~*(27)* "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

~~(27)~~*(28)* "Resident" has the meaning provided in 87-2-102.

~~(28)~~*(29)* "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

~~(29)~~*(30)* "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barters, or exchanges an interest either in game or fish for an article or thing of value.

~~(30)~~*(31)* "Site of the kill" means the location where a game animal or game bird expires and the person responsible for the death takes physical possession of the carcass.

~~(31)~~*(32)* "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

~~(32)~~*(33)* "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

~~(33)~~*(34)* "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(34)~~*(35)* "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(35)~~*(36)* "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

~~(36)~~*(37)* "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

~~(37)~~*(38)* "Wild buffalo or bison" or "wild buffalo" means a bison that:

(a) has not been reduced to captivity;

(b) has never been subject to the per capita fee under 15-24-921;

(c) has never been owned by a person; and

(d) is not the offspring of a bison that has been subject to the per capita fee under 15-24-921.

~~(38)~~*(39)* "Wildlife sanctuary" means a facility organized as a Montana nonprofit corporation pursuant to Title 35, chapter 2, or in good standing with and accredited by the American sanctuary association or the global federation of animal sanctuaries for the purpose of providing homes for nonreleasable wild animals. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

~~(39)~~*(40)* "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or in good standing with and accredited by the association of zoos and aquariums or the zoological association of America for the purpose of exhibiting wild animals for public viewing. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization."

**Section 2.** Section 87-6-107, MCA, is amended to read:

"**87-6-107. Unlawful harassment of game animals and game birds with vehicle or device.** (1) A person may not concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of or attempt to concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of a game animal or game bird from or with the use or aid of a self-propelled, motor-driven, or drawn vehicle or device*, including aircraft*. This section does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) The following penalties apply for a violation of this section:

(a) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than

$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) A person convicted of or who forfeits bond or bail after being charged with a second or subsequent violation of this section within 5 years shall be fined not less than $500 or more than $1,000 or be imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period."

**Section 3.** Section 87-6-208, MCA, is amended to read:

"**87-6-208. Unlawful use of aircraft.** (1) Except as provided in 87-3-126, a person may not:

(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft~~, including a helicopter~~;

(b) use an aircraft~~, including a helicopter~~:

(i) to locate any game animal for the purpose of hunting that animal during the same ~~hunting~~ *calendar* day ~~after the person has been airborne~~; or

(ii) for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird, migratory bird, game animal, or fur-bearing animal; or

(c) if in *or using* an aircraft~~, including a helicopter~~, spot or locate any game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person:

(i) on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife; or

(ii) within the same ~~hunting~~ *calendar* day after ~~being airborne.~~ *using the aircraft.*

(2) ~~Unless permitted by the department, a person may not use an aircraft, including a helicopter, for hunting purposes within the boundaries of a national forest except when cargo or persons are loaded and unloaded at federal aviation agency-approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies.~~ The provisions of this subsection *section* do not apply:

(a) during emergency situations;

(b) when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(3) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (3), a person convicted of a violation of this section shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a deer, elk, antelope, mountain lion, mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months,

or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

*(4) As used in this section, "aircraft" has the meaning provided in 87-6-101.*"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 318

[SB 88]

AN ACT EXCLUDING THE REQUIREMENT TO OBTAIN AN AQUATIC INVASIVE SPECIES PREVENTION PASS TO ACQUIRE A LIFETIME FISHING LICENSE FOR THE BLIND; AMENDING SECTIONS 87-2-130 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-130, MCA, is amended to read:

"**87-2-130. Aquatic invasive species prevention pass.** (1) ~~To~~ *Except as provided in 87-2-803(6), to* be eligible to fish in Montana or to apply for a fishing license or a combination license that includes a fishing license, a person who is 16 years of age or older must first obtain an aquatic invasive species prevention pass as provided in this section. The pass must be purchased once each license year.

(2) Resident aquatic invasive species prevention passes may be purchased for a fee of $2.

(3) Nonresident aquatic invasive species prevention passes may be purchased for a fee of $7.50."

**Section 2.** Section 87-2-803, MCA, is amended to read:

"**87-2-803. Licenses for persons with disabilities -- definitions.** (1) Persons with disabilities who are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule may purchase the following for one-half the cost:

(a) a Class A fishing license;

(b) a Class A-1 upland game bird license;

(c) a Class A-3 deer A tag;

(d) a Class A-5 elk tag.

(2) A person who has purchased a wildlife conservation license and a resident fishing license, game bird license, deer tag, or elk tag for a particular license year and who is subsequently certified as disabled is entitled to a refund for one-half of the cost of the fishing license, game bird license, deer tag, or elk tag previously purchased for that license year.

(3) A person who is certified as disabled pursuant to subsection (4) and who was issued a permit to hunt from a vehicle for license year 2014 or a subsequent license year is automatically entitled to a permit to hunt from a

vehicle for subsequent license years if the criteria for obtaining a permit do not change.

(4) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person meets the requirements of subsection (9).

(5) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (5) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (5)(d) of this section.

(b) This subsection (5) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind ~~upon~~ *on* payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. A wildlife conservation license ~~is~~ *and an aquatic invasive species prevention pass are* not ~~a prerequisite~~ *prerequisites* to licensure under this subsection (6)(a).

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (1) of this section, and must be accompanied by a companion, as provided in subsection (5)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) (a) A person qualifies for a permit to hunt from a vehicle if the person is certified by a licensed physician, a licensed chiropractor, a licensed physician assistant, or an advanced practice registered nurse to be nonambulatory, to have substantially impaired mobility, or to have a documented genetic condition that limits the person's ability to walk or carry significant weight for long distances.

(b) For the purposes of this subsection (9), the following definitions apply:

(i) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, as specified by the board of nursing pursuant to 37-8-202, in addition to completing basic nursing education.

(ii) "Chiropractor" means a person who has a valid license to practice chiropractic in this state pursuant to Title 37, chapter 12, part 3.

(iii) "Documented genetic condition" means a diagnosis derived from genetic testing and confirmed by a licensed physician.

(iv) "Nonambulatory" means permanently, physically reliant on a wheelchair or a similar compensatory appliance or device for mobility.

(v) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(vi) "Physician assistant" has the meaning provided in 37-20-401.

(vii) "Substantially impaired mobility" means virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances, or similar compensatory appliances or devices.

(10) Certification under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 319

[SB 105]

AN ACT PROHIBITING RENT CONTROL OF PRIVATE PROPERTY; AND AMENDING SECTION 7-1-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)*; or*

*(26) any power to control the amount of rent charged for private residential or commercial property. Private residential property does not include property in which the local government unit has a property interest or in which the local government unit has an interest through a housing authority.*"

Approved May 1, 2023

# CHAPTER NO. 320

[SB 106]

AN ACT GENERALLY REVISING VEHICLE AND VESSEL TITLE TRANSFER LAWS; ADDING DEFINITIONS TO INCLUDE MANUFACTURED HOMES AND MOBILE HOMES WITH A CERTIFICATE THAT HAS BEEN ISSUED AS ELIGIBLE FOR NONPROBATE TRANSFERS BY USE OF A BENEFICIARY DESIGNATION FORM; AMENDING SECTION 61-3-226, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-226, MCA, is amended to read:

"**61-3-226. Certificate of title -- transfer on death.** (1) The owner or joint owners of a vehicle or vessel may arrange for nonprobate transfer of the vehicle's or vessel's title at the time of death of the owner or last surviving joint owner by completing the beneficiary designation on the application for certificate of title prescribed by the department.

(2) The beneficiary designation must include fields for the following information:

(a) the make, model, year, and vehicle identification number of the vehicle or vessel;

(b) the name and signature of the owner or every joint owner of the vehicle or vessel, signed under penalty of unsworn falsification as provided in 45-7-203; and

(c) the name of the beneficiary or the names of the beneficiaries of the vehicle or vessel.

(3) (a) A beneficiary designation is perfected when it is submitted to the department with an application for certificate of title and if it provides the information and signatures required in subsection (2).

(b) An instrument for the testamentary transfer of a vehicle or vessel does not invalidate a perfected beneficiary designation.

(4) The owner or joint owners of a vehicle or vessel may revoke a perfected beneficiary designation by:

(a) transferring the vehicle or vessel to the beneficiary or a third party before death; or

(b) submitting a new beneficiary designation with an application for certificate of title.

(5) (a) After the death of the owner or last surviving joint owner of a vehicle or vessel subject to a perfected beneficiary designation, the beneficiary may present the proof of death of the owner or joint owners of the vehicle or vessel listed as a beneficiary and identification of the beneficiary to the department, to the county treasurer's office, or to an authorized agent and:

(i) request a replacement title for the vehicle or vessel; or

(ii) effect transfer of the title of the vehicle or vessel as required by 61-3-220.

(b) The beneficiary does not acquire any use, ownership, economic, or other interest in the vehicle or vessel until the beneficiary has filed the documents required by subsection (4) and the department, the county treasurer's office, or an authorized agent has either issued a replacement title or effected the transfer of the title.

(6) This section does not limit the rights of a lienholder whose lien attached to the vehicle or vessel prior to the death of the owner or last surviving joint owner named on the beneficiary designation.

*(7) As used in this section, the following definitions apply:*

*(a) "vehicle" means a vehicle or camper as those terms are defined by 61-1-101, manufactured home as defined by 15-24-201, mobile home as defined by 15-24-201, or other item for which a certificate of title is issued by the department and that have not been considered or declared an improvement to real property pursuant to 15-1-116;*

*(b) "vessel" means a vessel as defined by 61-1-101.*"

Approved May 1, 2023

# CHAPTER NO. 321

[SB 107]

AN ACT REVISING LAWS RELATING TO CIVIL LIABILITY FOR INJURIES INVOLVING ALCOHOL OVERCONSUMPTION; PROVIDING THAT STATUTORY LAW PRECLUDES A CLAIM UNDER ANY OTHER THEORY OF RECOVERY OR COMMON LAW CLAIM FOR INJURY OR DAMAGES INVOLVING THE ALCOHOL CONSUMER; CLARIFYING LAWS RELATED TO THE SERVING OF ALCOHOL CONSUMERS; PROVIDING CONSIDERATIONS REQUIRED OF A JURY OR TRIER OF FACT; PROHIBITING CERTAIN CONSIDERATIONS BY A JURY OR TRIER OF FACT; REVISING WHO MAY BRING A CIVIL ACTION; REVISING NOTICE REQUIREMENTS; REVISING PUNITIVE DAMAGE CONSIDERATIONS; AMENDING SECTION 27-1-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-1-710, MCA, is amended to read:

"**27-1-710. Civil liability for injuries involving alcohol consumption.** (1) The purpose of this section is to set statutory criteria governing the *civil* liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

*(2) Except as provided in this section, a person or entity that furnishes alcoholic beverages may not be found civilly liable under any other statute, theory of recovery, or common law claim for injury or damages arising from an event involving the person who was served or who consumed the beverage.*

~~(2)~~*(3)* ~~Except as provided in 16-6-305, a~~ *A* person or entity furnishing an alcoholic beverage may not be found *civilly* liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a *licensing status under Title 16 or a* provision or ~~a~~ violation of a provision of Title 16.

~~(3)~~*(4)* Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated *when furnished the alcoholic beverage*; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

~~(4)~~*(5)* ~~A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the sale, service, or provision of the alcoholic beverage in~~ *In* determining the cause of injuries or damages inflicted ~~upon~~ *on* another by the consumer *of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:*

*(a) the consumption of the alcoholic beverage;*

*(b) the actions of the consumer;*

*(c) the negligence of the person allegedly harmed by the consumer;*

*(d) the visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and*

*(e) independent intervening cause or multiple causes.*

*(6) Because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability under subsection (4)(b), a jury or trier of fact may not consider:*

*(a) a hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;*

*(b) an actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;*

*(c) the signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;*

*(d) the conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or*

*(e) whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.*

~~(5)~~*(7)* A civil action may not be brought pursuant to subsection ~~(3)~~ *(4)* by*:*

*(a) a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent; or*

*(b)* the consumer or by the consumer's estate, legal guardian, or dependent unless:

~~(a)~~*(i)* the consumer was under the legal age and the furnishing person knew or should have known that the consumer was ~~under age~~ *underage*; or

~~(b)~~*(ii)* the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.

~~(6)~~*(8)* A civil action may not be commenced under this section against a person *or entity* who furnished alcohol *to the consumer* unless the person bringing the civil action provides notice of an intent to file the action to the person *or entity* who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.

*(9) Notice made pursuant to subsection (8) must include the date, time, and circumstances of the event involving the consumer along with the alleged visual or audible indicators of visible intoxication observed by the furnishing party prior to service to the consumer. The person providing the notice must have a reasonable basis in law and fact that an exception described in subsections (4)(a) through (4)(c) has occurred before sending the notice.*

~~(7)~~*(10)* In any civil action brought pursuant to this section, the total liability for noneconomic damages *for all claimants* may not exceed $250,000 *for each event*.

~~(8)~~*(11)* In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed $250,000. *Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria in 27-1-221.*

~~(9)~~*(12)* Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section."

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 322

[SB 112]

AN ACT REVISING PHARMACIST PRESCRIBING AUTHORITY TO ALLOW THE PRESCRIBING OF CERTAIN DRUGS OR DEVICES UNDER LIMITED CIRCUMSTANCES; PROVIDING DEFINITIONS; AMENDING SECTIONS 37-2-101, 37-2-102, 37-2-103, 37-2-104, 37-2-108, 37-7-101, AND 37-7-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Pharmacist prescribing authority -- exception.** (1) A pharmacist may prescribe a drug or device for a legitimate medical purpose as allowed under this section for a person with whom the pharmacist has a patient-prescriber relationship.

(2) A pharmacist shall establish the patient-prescriber relationship through a documented patient evaluation that is adequate to:

(a) establish diagnoses, if the drug or device is being prescribed pursuant to subsection (3)(b); and

(b) identify underlying conditions and contraindications to the treatment.

(3) A pharmacist's prescribing authority is limited to drugs and devices that are prescribed for conditions that:

(a) do not require a new diagnosis; or

(b) (i) are minor and generally self-limiting;

(ii) are diagnosed by or for which clinical decisions are made using a test that is waived under the federal clinical laboratory improvement amendments of 1988; or

(iii) are patient emergencies.

(4) A pharmacist may:

(a) prescribe only the drugs or devices for which the pharmacist is educationally prepared and for which competency has been achieved and maintained; and

(b) bill only for assessment services that were necessary, based on the pharmacist's professional judgment, for the pharmacist's decision to prescribe a drug or device pursuant to this section.

(5) A pharmacist may not prescribe a controlled substance or an abortion-inducing drug as that term is defined in 50-20-703.

(6) A pharmacist prescribing a drug or device pursuant to this section shall:

(a) recognize the limits of the pharmacist's knowledge and experience and consult with and refer to other health care providers as appropriate; and

(b) maintain documentation sufficient to justify the care provided, including but not limited to the:

(i) information collected as part of the patient record;

(ii) prescription record;

(iii) provider notification; and

(iv) follow-up care plan.

(7) This section does not apply to a pharmacist who is operating within a collaborative pharmacy practice agreement.

**Section 2.** Section 37-2-101, MCA, is amended to read:

"**37-2-101. Definitions.** As used in this part, the following definitions apply:

*(1) "Collaborative pharmacy practice agreement" has the meaning provided in 37-7-101.*

~~(1)~~*(2)* "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)~~*(3)* "Controlled substance" has the meaning provided in 37-7-101.

~~(3)~~*(4)* "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

~~(4)~~*(5)* "Dispense" has the meaning provided in 37-7-101.

~~(5)~~*(6)* "Drug" has the meaning provided in 37-7-101.

~~(6)~~*(7)* "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

~~(7)~~*(8)* "Medical practitioner" means any person licensed by the state of Montana to engage in*:*

*(a)* the practice of medicine, dentistry, osteopathy, podiatry, *or* optometry*;*

*(b) the practice of pharmacy and authorized to:*

*(i) prescribe immunizations pursuant to 37-7-105; or*

*(ii) prescribe drugs pursuant to [section 1] or in accordance with a collaborative pharmacy practice agreement;*~~,~~ or

*(c)* a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

~~(8)~~*(9)* "Naturopathic physician" means a person licensed under Title 37, chapter 26, to practice naturopathic health care.

~~(9)~~*(10)* "Opioid" has the meaning of "opiate" provided in 50-32-101.

~~(10)~~*(11)* "Opioid-naive patient" means a patient who has not been prescribed a drug containing an opioid in the 90 days prior to the acute event or surgery for which an opioid is prescribed.

~~(11)~~*(12)* "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

~~(12)~~*(13)* "Pharmacy" has the meaning provided in 37-7-101.

~~(13)~~*(14)* "State" means the state of Montana or any political subdivision of the state."

**Section 3.** Section 37-2-102, MCA, is amended to read:

"**37-2-102. Practices declared unlawful between drug companies and medical practitioners -- *exception*.** *(1)* ~~It~~ *Except as provided in subsection (2), it* is unlawful:

~~(1)~~*(a)* for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income of the company with the intent or for the purpose of inducing the medical practitioner to prescribe to patients the drugs of the company. The giving or selling of an interest by the company to a medical practitioner without the interest first having been publicly offered to the general public is prima facie evidence of the intent or purpose.

~~(2)~~*(b)* for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it is not unlawful for a medical practitioner to acquire or own an interest solely for investment, and the acquisition of an interest that is publicly offered to the general public is prima facie evidence of its acquisition solely for investment; *or*

~~(3)~~*(c)* for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

*(2) Subsection (1)(c) does not prohibit a pharmacy licensed under Title 37, chapter 7, from undertaking activities allowed under Title 37, chapter 7.*"

**Section 4.** Section 37-2-103, MCA, is amended to read:

"**37-2-103. Practices declared unlawful between medical practitioners and pharmacies -- *exceptions*.** (1) It is unlawful for a medical practitioner *other than a pharmacist* to own, directly or indirectly, a community pharmacy. This subsection does not prohibit a medical practitioner from dispensing a drug that the medical practitioner is permitted to dispense under 37-2-104.

(2) It is unlawful for a medical practitioner, directly or indirectly, to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by the community pharmacy of drugs to patients of a medical practitioner.

*(3) Subsection (2) does not prohibit a pharmacy licensed under Title 37, chapter 7, from undertaking activities allowed under Title 37, chapter 7.*"

**Section 5.** Section 37-2-104, MCA, is amended to read:

"**37-2-104. Dispensing of drugs by medical practitioners -- registration -- exceptions.** (1) Subject to subsection (7), a medical practitioner may dispense drugs if the practitioner:

(a) registers with the board of pharmacy provided for in 2-15-1733; and

(b) complies with the requirements of this section.

(2) Drugs dispensed by a medical practitioner must be:

(a) dispensed directly by the practitioner at the practitioner's office or place of practice;

(b) dispensed only to the practitioner's own patients; and

(c) necessary in the treatment of the condition for which the practitioner is attending the patient.

(3) Before dispensing a drug, a medical practitioner shall offer to give a patient the prescription in a written, electronic, or facsimile form that the patient may choose to have filled by the practitioner or any pharmacy.

(4) Except as otherwise provided in this section, a medical practitioner:

(a) may dispense only those drugs that the practitioner is allowed to prescribe under the practitioner's scope of practice *unless the practitioner is engaged in the practice of pharmacy and dispensing a drug pursuant to Title 37, chapter 7*; and

(b) may not dispense a controlled substance *unless the practitioner is engaged in the practice of pharmacy and is dispensing a controlled substance pursuant to Title 37, chapter 7*.

(5) A medical practitioner dispensing drugs shall comply with and is subject to the provisions of this part and the provisions of:

(a) Title 37, chapter 7, parts 4, 5, and 15;

(b) Title 50, chapter 31, parts 3 and 5;

(c) the labeling, storage, inspection, and recordkeeping requirements established by the board of pharmacy; and

(d) all applicable federal laws and regulations.

(6) A medical practitioner registering with the board of pharmacy shall pay a fee established by the board by rule. The fee must be paid at the time of registration and on each renewal of the practitioner's license.

(7) Except as provided in subsection (8), a medical practitioner registered with the board of pharmacy may not dispense drugs to an injured worker being treated pursuant to Title 39, chapter 71.

(8) This section does not prohibit any of the following when a medical practitioner has not registered to dispense drugs or when a practitioner registered to dispense drugs is treating an injured worker pursuant to Title 39, chapter 71:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (8)(h) must meet the labeling, storage, and recordkeeping requirements of the board of pharmacy.

(i) a medical practitioner from dispensing an opioid antagonist as provided in 50-32-605."

**Section 6.** Section 37-2-108, MCA, is amended to read:

"**37-2-108. (Temporary) Restriction on prescriptions for opioid-naive patients -- exceptions.** (1) Except as provided in subsection (2), when a medical practitioner or a naturopathic physician *authorized to prescribe an opioid* prescribes an opioid to an opioid-naive patient on an outpatient basis, the prescription may not be for more than a 7-day supply.

(2) The restriction imposed under subsection (1) does not apply if:

(a) in the professional medical judgment of the medical practitioner or naturopathic physician, a prescription for more than a 7-day supply is necessary to treat chronic pain, pain associated with cancer, or pain experienced while the patient is in palliative care; or

(b) the opioid being prescribed is designed for the treatment of opioid abuse or dependence, including but not limited to opioid agonists and opioid antagonists. (Terminates June 30, 2025--sec. 8, Ch. 89, L. 2019.)"

**Section 7.** Section 37-7-101, MCA, is amended to read:

"**37-7-101. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(15) "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a drug or device and does not include administering or dispensing a prescription drug, pursuant to section 353(b)(1), or a new animal drug, pursuant to section 360b(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(16) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement.

Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "FDA" means the United States food and drug administration.

(20) "Health care facility" has the meaning provided in 50-5-101.

(21) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(22) "Health information system" means one of the following systems used to compile and manage patient health care information:

(a) an electronic health record system;

(b) a health information exchange approved by the board;

(c) a pharmacy dispensing system; or

(d) a system defined by the board by rule.

(23) "Hospital" has the meaning provided in 50-5-101.

(24) "Immunization-certified pharmacist" means a pharmacist who:

(a) has successfully completed an immunization delivery course of training that is approved by the accreditation council for pharmacy education or by an authority approved by the board and that, at a minimum, includes instruction in hands-on injection technique, clinical evaluation of indications and contraindications of immunizations, storage and handling of immunizations, and documentation and reporting; and

(b) holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, the American red cross, or another recognized provider.

(25) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(26) "Long-term care facility" has the meaning provided in 50-5-101.

(27) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(28) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(29) "Outsourcing facility" means a facility at one geographic location or address that:

(a) engages in compounding of sterile drugs;

(b) has elected to register as an outsourcing facility with FDA; and

(c) complies with all the requirements of section 353b of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(30) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository

program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(31) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(32) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(33) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(34) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(35) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(36) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(37) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(38) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement, except as provided in 37-7-105, and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

*(d) prescribing drugs and devices in accordance with [section 1];*

~~(d)~~*(e)* monitoring drug therapy and use;

~~(e)~~*(f)* initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

~~(f)~~*(g)* participating in quality assurance and performance improvement activities;

~~(g)~~*(h)* providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

~~(h)~~*(i)* participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(39) "Practice pharmacy by means of telehealth" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(40) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(41) "Prescriber" has the same meaning as provided in 37-7-502.

(42) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(43) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the

directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(44) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(45) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(46) "Registry" means the prescription drug registry provided for in 37-7-1502.

(47) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(48) "Wholesale" means a sale for the purpose of resale."

**Section 8.** Section 37-7-103, MCA, is amended to read:

"**37-7-103. Exemptions.** Subject only to 37-2-104, 37-7-401, and 37-7-402, this chapter does not:

(1) subject a medical practitioner, as defined in 37-2-101, *who is not a pharmacist* or a person who is licensed in this state to practice veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a medical practitioner from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged contraceptives, other than mifepristone, if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6."

**Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 7, part 1, and the provisions of Title 37, chapter 7, apply to [section 1].

Approved May 1, 2023

# CHAPTER NO. 323

[SB 113]

AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS TO MAKE PERMANENT THE REQUIREMENT THAT ADDITIONAL NOTIFICATIONS BE PROVIDED TO A PARENT OR LEGAL GUARDIAN FROM WHOM A CHILD IS REMOVED; AMENDING SECTION 41-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-301, MCA, is amended to read:

"**41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the option for an emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

(c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and

(d) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person:

(i) has the right to receive a copy of the affidavit as provided in subsection (6);

(ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and

(iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.

(2) If a child protection specialist, 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, or strangulation of a partner or family member, as provided for in 45-5-215, 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 or strangulation of a partner or family member 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 or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member 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 or strangulation of a partner or family member; 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 or strangulation of a partner or family member 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 or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist 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.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

**41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

(b) include information regarding the ~~emergency protective services and show cause hearings~~ *emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days,* and the purpose of the hearings; ~~and~~

*(c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and*

~~(c)~~*(d)* advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person*:*

*(i) has the right to receive a copy of the affidavit as provided in subsection (6);*

*(ii) has the right to attend and participate in the emergency protective services hearing and the show cause hearing, including providing statements to the judge;*

*(iii)* may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services*; and*

*(iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.*

(2) If a child protection specialist, 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, or strangulation of a partner or family member, as provided for in 45-5-215, 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 or strangulation of a partner or family member 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 or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member 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 or strangulation of a partner or family member; 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 or strangulation of a partner or family member 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 or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the

emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist 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.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

**Section 2. Effective date.** [This act] is effective July 1, 2023.

Approved May 1, 2023

# CHAPTER NO. 324

[SB 115]

AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS CONCERNING THE TERMS PSYCHOLOGICAL ABUSE OR NEGLECT AND PHYSICAL OR PSYCHOLOGICAL HARM; PROVIDING THAT MALTREATMENT CONSTITUTES "PSYCHOLOGICAL ABUSE OR NEGLECT" OF A CHILD ONLY WHEN IDENTIFIED BY A LICENSED PROFESSIONAL; AND AMENDING SECTION 41-3-102, 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, or 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;

(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; or

(C) any form of child sex trafficking or human trafficking.

(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).

(d) The term does not include*:*

*(i)* 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*; or*

*(ii) a youth not receiving supervision solely because of parental inability to control the youth's behavior*.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "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.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 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.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "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.

(19) "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.

(20) "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.

(21) "Physical neglect" means*:* ~~either~~

*(a)* 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~~*;*

*(b)* failure to provide cleanliness and general supervision, or both~~, or~~*;*

*(c)* exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child*;*

*(d) allowing sexual abuse or exploitation of the child; or*

*(e) causing malnutrition or a failure to thrive.*

(22) ~~(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~~ *on* 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.~~

(23) (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, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (a) "Psychological abuse or neglect" means severe maltreatment, through acts or omissions, that ~~are~~ *is* 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,~~ *and that is identified as psychological abuse or neglect by a licensed psychologist, a licensed professional counselor, a licensed clinical social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse with a focused practice in psychiatry.*

*(b) The term includes but is not limited to the commission of acts of violence against another person residing in the child's home.*

~~(b)~~*(c)* The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(25) "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.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "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.

(28) "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.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, 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.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "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.

(34) (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 (34), "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.

(35) "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. Coordination instruction.** If both House Bill No. 37 and [this act] are passed and approved and both contain a section that amends 41-3-102, then the amendments to 41-3-102(7) in House Bill No. 37 are void and [section 1(7) of this act], amending 41-3-102(7), must be amended as follows:

"(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;

(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; or

(C) any form of child sex trafficking or human trafficking.

(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).

(d) The term does not include*:*

*(i)* 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*;*

*(ii) a youth not receiving supervision solely because of parental inability to control the youth's behavior;*

*(iii) substance use by a parent or guardian, unless the substance use is a contributing factor to other actions that constitute physical or psychological harm to a child;*

*(iv) disorderly living conditions or other factors closely related to economic status; or*

*(v) a child's obesity*."

Approved May 1, 2023

# CHAPTER NO. 325

[SB 117]

AN ACT PROHIBITING CERTAIN FUNDS FROM BEING ACCEPTED OR USED FOR THE PURPOSE OF CONDUCTING AN ELECTION; ADDING A PENALTY; PROVIDING THAT A VIOLATION IS A FELONY; AND AMENDING SECTIONS 7-8-103 AND 17-3-1001, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Donations -- prohibition -- penalty.** (1) Except as provided in subsections (2) through (4), the state, the secretary of state, a county, a municipality, or the officers or employees of those entities may not accept, use, or dispose of a donation in the form of money, grants, property, or personal services from an individual or a corporation, whether operating for-profit or nonprofit, for the purpose of funding the functions or responsibilities of the county or municipality to conduct an election pursuant to the provisions of Title 13. All costs and expenses relating to conducting elections must be paid for with public funds.

(2) This section may not be construed to apply to the donation or use of a location for voting purposes, services that are provided at no cost to the state, the secretary of state, a county, a municipality, or the officers or employees of those entities, or goods that have a nominal value of less than $100.

(3) This section may not be construed to prevent tribal nations from providing donated space to be used as a polling location or for the same purposes as the main election office.

(4) This section may not be construed to prevent tribal nations from using their own funds, funds from other tribal nations, or funds from public entities such as the state or federal government for election purposes.

(5) This section may not be construed to prevent a nonprofit organization or a corporation from spending its own money to its own initiatives related to an election.

(6) A person who purposefully or knowingly violates this section is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years or by a fine of not more than $50,000, or both.

**Section 2.** Section 7-8-103, MCA, is amended to read:

"**7-8-103. Authorization for governmental and public entities to take property by gift or devise -- *restriction*.** (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal

property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) ~~Said~~ *The* gifts, donations, grants, devises, or bequests made to any officer or board of any ~~such~~ city or town ~~shall~~ *must* be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any ~~such~~ city or town and ~~shall~~ *must* be administered and used by and for ~~such~~ *the* city or town for the particular purpose for which ~~the same~~ *it* was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in ~~such~~ *the* gift, donation, grant, devise, or bequest, then ~~the same shall~~ *it must* be used for the general support, maintenance, or improvement of any ~~such~~ city or town.

*(3) A gift, donation, grant, devise, or bequest may not be accepted or used in contravention of [section 1].*"

**Section 3.** Section 17-3-1001, MCA, is amended to read:

"**17-3-1001. State institutions which may take by gift, bequest, or grant -- *restriction*.** (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of corrections and the department of public health and human services, and any institutions now created or established or which may be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and must be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event that a particular purpose is not mentioned in the gift, grant, devise, or bequest, then it must be used for the general support, maintenance, or improvement of the institution by the state.

*(3) A gift, donation, grant, devise, or bequest may not be accepted or used in contravention of [section 1].*"

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

**Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 1, 2023

# CHAPTER NO. 326

[SB 128]

AN ACT PROVIDING THAT EXEMPT STAFF OF LEGISLATIVE LEADERSHIP MAY ASSIST LEGISLATORS IN EXPRESSING OPINIONS ON STATEWIDE BALLOT ISSUES; AMENDING SECTION 2-2-121, 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) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

*(ii) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104, related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative, referendum, or constitutional amendment;*

~~(ii)~~*(iii)* in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 327

[SB 130]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS AND THE GOVERNING BODY OF A MUNICIPALITY TO CONSOLIDATE A PLANNING BOARD OR PLANNING BOARDS, A ZONING COMMISSION, OR A BOARD OF ADJUSTMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Consolidated land use boards -- zoning commission, planning board, and board of adjustment.** (1) The governing body of a city, county, or consolidated city-county may consolidate any combination of a planning board or planning boards as authorized in Title 76, chapter 1, a zoning commission as provided in 76-2-220 and 76-2-307, and a board of adjustment as provided in 76-2-221 and 76-2-321 into a consolidated land use board.

(2) The requirements regarding the duties and roles of a planning board as provided in Title 76, chapter 1, a zoning commission as provided in Title 76, chapter 2, parts 2 and 3, and a board of adjustment as provided in Title 76, chapter 2, parts 2 and 3, apply to a consolidated land use board.

(3) A consolidated land use board allowed under this section shall adopt bylaws that clearly define the roles and duties of a member when acting as a planning board member, a zoning commission member, or a board of adjustment member.

(4) (a) Except as provided in subsection (4)(b), a consolidated land use board allowed under this section must consist of at least five appointed citizen members that reside within the jurisdictional area of the consolidated land use board and who may be removed by the appointing authority. A vacancy on a consolidated land use board must be filled by the appointing authority.

(b) If a consolidated land use board includes the consolidation of a joint or consolidated board as allowed in 76-1-112 or a city-county planning board as allowed in 76-1-201, the consolidated land use board must consist of at least nine appointed citizen members as required in 76-1-201.

(5) The requirements provided in Title 76, chapter 1, and in Title 76, chapter 2, parts 2 and 3, regarding the number, qualification, and removal of members on a planning board, zoning commission, or board of adjustment do not apply to a consolidated land use board allowed under this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 1, part 1, and the provisions of Title 76, chapter 1, part 1, apply to [section 1].

Approved May 1, 2023

# CHAPTER NO. 328

[SB 131]

AN ACT REVISING LOCAL GOVERNMENT REVIEW REQUIREMENTS OF EXEMPT DIVISIONS AND AGGREGATIONS OF LAND; REQUIRING THE GOVERNING BODY TO COMPLETE REVIEWS WITHIN 20 WORKING DAYS; PROHIBITING THE IMPOSITION OF CERTAIN NEW CRITERIA FOR APPROVAL; AND AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-201, MCA, is amended to read:

"**76-3-201. Exemption for certain divisions of land -- fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

(3) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(4) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (4)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter, if applicable.

(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

(6) The governing body*:*

*(a)* may examine a division of land to determine whether or not the requirements of this chapter apply to the division ~~and~~*;*

*(b)* may establish reasonable fees, not to exceed $200, for the examination*;*

*(c) shall complete the examination and approve or deny the application for a division of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the examination under regulations adopted pursuant to 76-3-504(1)(p); and*

*(d) may not impose conditions on the approval of a division of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4.*"

**Section 2.** Section 76-3-207, MCA, is amended to read:

"**76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1), within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the

governing body before an amended plat may be filed with the county clerk and recorder.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body*:*

*(a)* may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation ~~and~~*;*

*(b)* may establish reasonable fees, not to exceed $200, for the examination*;*

*(c) shall complete the examination and approve or deny the application for a division or aggregation of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to conduct its review under regulations adopted pursuant to 76-3-504(1)(p); and*

*(d) may not impose conditions on the approval of a division or aggregation of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4.*"

Approved May 1, 2023

# CHAPTER NO. 329

[SB 138]

AN ACT PROVIDING THAT ACQUISITION BY THE STATE OF LAND SUBJECT TO A PRESCRIPTIVE EASEMENT DOES NOT TERMINATE THE PRESCRIPTIVE EASEMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State acquisition of land subject to prescriptive easement.** Acquisition by the state of land subject to a prescriptive easement does not terminate the prescriptive easement.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 1].

Approved May 1, 2023

# CHAPTER NO. 330

[SB 142]

AN ACT REVISING LOCAL GOVERNMENT IMPACT FEE LAWS; REQUIRING IMPACT FEE COLLECTIONS TO BE ACCOUNTED FOR IN SEPARATE PROPRIETARY FUNDS AND RESTRICTED TO THE SPECIFIC

PUBLIC FACILITY FOR WHICH THE IMPACT FEE WAS COLLECTED; ALLOWING FOR PROCEEDINGS TO BE BROUGHT AGAINST A GOVERNMENTAL ENTITY; SECTION 7-6-1603, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-1603, MCA, is amended to read:

"**7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required -- *cause of action.*** (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) ~~Upon collection, impact fees~~ *Impact fees collected for a public facility* must be deposited in a special proprietary fund~~, which must be invested with all interest accruing to the fund~~ *created specifically for each public facility as identified in the service area report. Funds must be invested with all interest accruing to the fund. Impact fees collected for a specific public facility may not be transferred to a different fund and must be spent and accounted for solely for the public facility as identified in the service area report.*

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) *(i)* If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time ~~that the refund was due~~ *the impact fee in question was paid.*

*(ii) If a written request is submitted as provided for in subsection (9), the governmental entity shall refund any impact fee due under subsection (1)(c)(i) within 90 days.*

*(iii) The governmental entity may not impose conditions when issuing a refund pursuant to this part.*

*(d) Impact fees may only be used to acquire, construct, or improve the specific public facility project for which they were collected and may only be expended in compliance with the service area report.*

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

*(9) Any person or entity who is owed refunded impact fees as provided in this part may request in writing from the governmental entity that prompt payment be concluded. A person or entity who submitted a written request pursuant to this subsection may bring a cause of action against the governmental entity in a court of competent jurisdiction for failure to comply with this part. If a claimant prevails in an action brought against a governmental entity pursuant to this subsection, the court shall award the claimant payment of all amounts due, court costs, expert witness fees, and attorney fees incurred by the claimant. If the claimant is unsuccessful, the court shall award the governmental entity court costs, expert witness fees, and attorney fees.*"

**Section 2. 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 3. Effective date.** [This act] is effective January 1, 2024.

Approved May 1, 2023

# CHAPTER NO. 331

[SB 152]

AN ACT REMOVING EXEMPT DIVISIONS CREATED AFTER 1973 FROM CONSIDERATION WHEN DETERMINING WHETHER THE SUBDIVISION OF A TRACT OF RECORD CONSTITUTES A MINOR SUBDIVISION; AND AMENDING SECTION 76-3-609, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-609, MCA, is amended to read:

"**76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter ~~or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973,~~ *or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since October 1, 2003,* then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time

that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Approved May 1, 2023

# CHAPTER NO. 332

[SB 158]

AN ACT REVISING FAMILY TRANSFER LAW; PROVIDING AN EXEMPTION FROM ADDITIONAL SUBDIVISION REVIEWS IF CERTAIN CONDITIONS ARE MET; PROVIDING AN EVIDENTIARY STANDARD FOR COURT PROCEEDINGS; PROVIDING A PENALTY; AMENDING SECTIONS 76-3-105 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-105, MCA, is amended to read:

"**76-3-105. Violations.** ~~Any~~ *Except as provided in 76-3-207, any* person who violates any provision of this chapter or any local regulations adopted pursuant ~~thereto~~ *to this chapter* shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant ~~thereto~~ *to this chapter* ~~shall~~ *must* be deemed a separate and distinct offense."

**Section 2.** Section 76-3-207, MCA, is amended to read:

"**76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1)~~,~~*:*

*(a)* within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder~~.~~*;*

*(b) (i) a division within a platted subdivision is exempt from additional subdivision reviews and is subject to applicable zoning regulations adopted under Title 76, chapter 2, unless the method of disposition is adopted for the purpose of evading this chapter, if the division:*

*(A) is within a subdivision that has been approved by a local governing body;*

*(B) creates parcels of a size allowed within the subdivision; and*

*(C) is gifted or sold to a member of the landowner's immediate family;*

*(ii) an amended plat must be filed with the county clerk and recorder after a division provided in subsection (2)(b)(i) occurs; and*

*(iii) except as otherwise provided in this subsection (2)(b), a restriction or requirement on the platted subdivision continues to apply to a division allowed in subsection (2)(b)(i);*

*(c) a division of land exempted under subsection (1)(b) that is also located in a zoning district is allowed if each family transfer parcel created by the division is at least 5 acres, unless the zoning district allows for smaller lot sizes; and*

*(d) a division of land transferred to an immediate family member pursuant to subsection (1)(b) or (1)(c) may be transferred regardless of age and may be owned jointly with that immediate family member's spouse.*

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed $200, for the examination.

*(5) An immediate family member or the spouse of an immediate family member who receives a division of land pursuant to subsection (1)(b) or (2)(b) may not transfer or otherwise convey the division of land for a period of up to 2 years after the date of the division unless the governing body sets a period of less than 2 years. A governing body may authorize variances from these requirements to address hardship situations.*

*(6) If a governing body can prove by documented evidence in a court of competent jurisdiction that a person has knowingly evaded subdivision regulations through the use of a division of land pursuant to subsection (1)(b) or (2)(b), that person is subject to a civil penalty of $5,000 for each division of land, payable to the governing body.*"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 333

[SB 162]

AN ACT PROVIDING THAT FOSTER PARENTS, PREADOPTIVE PARENTS, OR RELATIVES CARING FOR CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS BE INFORMED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE ABILITY TO APPEAR, TO BE HEARD, AND TO INTERVENE IN COURT PROCEEDINGS; AND AMENDING SECTION 41-3-422, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** 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 upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. 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 immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(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 has the right 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.

*(c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's, preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and to attempt to intervene in proceedings under this chapter.*

(10) An abuse and neglect petition must state:

(a) the nature of the alleged abuse or neglect and of the relief requested;

(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(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 engagement 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 41-3-425, to 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."

Approved May 1, 2023

# CHAPTER NO. 334

[SB 163]

AN ACT ESTABLISHING A VOLUNTEER PROGRAM WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SUPPORT CHILD PROTECTIVE SERVICES ACTIVITIES; EXTENDING RULEMAKING AUTHORITY; AND REQUIRING THE DEPARTMENT TO REPORT TO THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Volunteer program -- rulemaking -- report.** (1) There is established within the department a volunteer program to support child protective services activities. Volunteers must be 18 years of age or older. Volunteers are not salaried employees and are not entitled to wages and benefits.

(2) The department shall, by administrative rule:

(a) establish a registration portal for volunteers interested in supporting child protective services activities, including those related to child abuse and neglect prevention, family support, and reunification; and

(b) develop a process for referring potential volunteers to faith-based and community-based organizations offering volunteer opportunities that support child protective services activities, including those related to child abuse and neglect prevention, family support, and reunification.

(3) In accordance with 5-11-210, the department shall report to the children, families, health, and human services interim committee regarding the department's efforts under this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

Approved May 1, 2023

# CHAPTER NO. 335

[SB 396]

AN ACT REVISING ELECTRONIC DRIVER'S LICENSE PRIVACY LAW; PROVIDING THAT DISPLAYING AN ELECTRONIC DRIVER'S LICENSE ON AN ELECTRONIC DEVICE DOES NOT CONSTITUTE CONSENT TO A SEARCH OR SEIZURE OF THE ELECTRONIC DEVICE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Displaying electronic driver's license.** Displaying an electronic driver's license on an electronic device or handing an electronic

device displaying an electronic driver's license to a peace officer does not constitute consent to a search or seizure of the electronic device.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 3, and the provisions of Title 61, chapter 5, part 3, apply to [section 1].

Approved May 1, 2023

# CHAPTER NO. 336

[SB 414]

AN ACT NAMING THE OFFICES OF THE SECRETARY OF THE SENATE, ROOM 302 OF THE STATE CAPITOL BUILDING, IN HONOR OF MARILYN MILLER; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Marilyn Miller is a Montanan who has dedicated her working life to serving the people of her home state; and

WHEREAS, Marilyn Miller has served admirably as the Chief Clerk of the House of Representatives for eight legislative sessions, and as Secretary of the Senate for eight additional legislative sessions; and

WHEREAS, Marilyn Miller, during her time in state government, has set the standard for public service leadership, professional competency, and integrity; and

WHEREAS, Marilyn Miller has mentored, trained, and supported hundreds of secretaries, legislative staff, state government personnel, and the occasional elected official in the performance of their duties; and

WHEREAS, Marilyn Miller has set an example for her colleagues by performing her duties with patience, decorum, and good humor; and

WHEREAS, Marilyn Miller is an invaluable and irreplaceable part of the Legislature who has gone above and beyond to support Montana's elected officials in the course of their official duties; and

WHEREAS, Marilyn Miller is a woman of uncommon humility who has never sought to elevate herself and, had she known the Legislature planned to honor her, would have likely declined the privilege; and

WHEREAS, in her final legislative session, a grateful Legislature, wishing to acknowledge and reward a lifetime of public service, offers this small commemoration for all she has done for the State of Montana, its Legislature, and its people by placing her name above the door of the office she has served so well.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-807, MCA, is amended to read:

"**2-17-807. Approval for displays and naming buildings, spaces, and rooms.** (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.

(2) (a) Except as provided in subsections (2)(b) through ~~(2)(g)~~ *(2)(h)*, a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display

commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) Except as provided in subsection (2)(f), a public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

(e) The justice building located at 215 north Sanders in Helena must be named after Joseph P. Mazurek, and a plaque and memorial commemorating him may be displayed on the capitol complex grounds.

(f) The Montana heritage center must be named after Betty Babcock, and a plaque commemorating her must be displayed there.

(g) The statue or bust of Judy Martz authorized in 2-17-808(2)(f) may continue to be displayed in the capitol or on the grounds immediately surrounding the capitol.

*(h) The offices of the secretary of the senate, room 302, must be named the Marilyn Miller senate suite, and a plaque commemorating Marilyn Miller must be displayed there.*

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds. (Subsection (2)(g) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

**Section 2.** Section 2-17-808, MCA, is amended to read:

"**2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays.** (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:
(i) Wilbur Fiske Sanders;
(ii) Jeannette Rankin; and
(iii) Mike and Maureen Mansfield;
(e) the Montana statehood centennial bell;
(f) the gallery of outstanding Montanans;
(g) the Montana constitutional exhibit;
(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors;
(i) a plaque commemorating former representative Francis Bardanouve and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanouve; ~~and~~
(j) a mural honoring the historical contributions of women as community builders*; and*
*(k) a plaque commemorating former secretary of the senate Marilyn Miller and lettering naming the offices of the secretary of the senate, room 302 of the capitol, the Marilyn Miller senate suite.*
(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:
(a) the statues of Thomas Francis Meagher and Lady Liberty;
(b) the plaques commemorating:
(i) Donald Nutter;
(ii) President George H. W. Bush; and
(iii) American prisoners of war and personnel of the United States armed services missing in action;
(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;
(d) the Montana centennial square;
(e) the monument of the ten commandments; and
(f) a statue or bust commemorating Judy Martz, Montana's first woman governor.
(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:
(a) the statue by Robert Scriver entitled "symbol of the pros";
(b) the monuments to the liberty bell, the veterans' and pioneer memorial building--landscape beautification project, Montana veterans, Pearl Harbor survivors, and the peace pole;
(c) the sculptures of the herd bull and the eagle;
(d) the plaques commemorating the Montana national guard and Lewis and Clark; and
(e) the arrastra.
(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:
(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";
(b) the art displays known as "Montana workers--mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell;

(e) the plaque and Lou Peters award commemorating Karl Ohs; and

(f) the plaque and memorial commemorating Joseph P. Mazurek.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4). (Subsection (2)(f) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2023

# CHAPTER NO. 337

[SB 164]

AN ACT NAMING THE MONTANA HIGHWAY PATROL HEADQUARTERS CAMPUS AFTER KRIS HANSEN.

WHEREAS, Kris Hansen served the nation with the Central Intelligence Agency and as a member of the Montana National Guard; and

WHEREAS, Kris Hansen represented Montanans in both chambers of the Montana State Legislature; and

WHEREAS, Kris Hansen continued to work for Montana as Deputy State Auditor and Lieutenant Attorney General; and

WHEREAS, Kris Hansen was a mentor and friend to many legislators, elected officials, and staff; and

WHEREAS, Kris Hansen held the Montana Highway Patrol, its troopers, and their public safety mission in high regard, and as Lieutenant Attorney General she was instrumental in establishing the headquarters in Boulder, Montana.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana highway patrol headquarters named after Kris Hansen.** (1) The headquarters of the Montana highway patrol is named after Kris Hansen, former chief deputy attorney general and state legislator.

(2) The department of justice shall implement renaming the headquarters.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 1, part 1, and the provisions of Title 44, chapter 1, part 1, apply to [section 1].

Approved May 2, 2023

# CHAPTER NO. 338

[SB 166]

AN ACT EXEMPTING BARBERING SERVICES PROVIDED AT STATE CORRECTIONAL FACILITIES AND COUNTY DETENTION CENTERS FROM LICENSING REQUIREMENTS; AMENDING SECTION 37-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-31-102, MCA, is amended to read:

"**37-31-102. Exemptions.** The provisions of this chapter do not prohibit:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; ~~or~~

(3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services*; or*

*(4) barbering services performed at a correctional facility listed in 53-30-101 that is operated by or under contract with the department of corrections or a detention center as defined in 7-32-2241*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 2023

# CHAPTER NO. 339

[SB 167]

AN ACT REVISING LAWS RELATING TO RESIGNATIONS OF DIRECTORS OF NONPROFIT CORPORATIONS; ALLOWING A DIRECTOR TO RESCIND A RESIGNATION; AND AMENDING SECTION 35-2-420, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-2-420, MCA, is amended to read:

"**35-2-420. Resignation of directors.** (1) *(a)* A director may resign at any time by delivering written notice to the board of directors, its presiding officer, the president, or the secretary.

*(b) A director may rescind a resignation within 5 business days of resigning unless prohibited by the bylaws of the corporation or the articles of incorporation. The director's recission of a resignation must be in writing and delivered to the members of the board of directors.*

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date *or the director rescinds the resignation under subsection (1)(b).* If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date."

Approved May 2, 2023

# CHAPTER NO. 340

[SB 170]

AN ACT PROVIDING AN ALTERNATIVE ADMINISTRATIVE PROCESS FOR CERTAIN MINOR SUBDIVISIONS; PROVIDING CRITERIA AND EXEMPTIONS FOR CERTAIN MINOR SUBDIVISIONS; GRANTING A SUBDIVISION ADMINISTRATOR DECISION-MAKING AUTHORITY; PROVIDING A PROCESS FOR APPEAL; PROVIDING A DEFINITION; AND AMENDING SECTION 76-3-609, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-609, MCA, is amended to read:

"**76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) *Except as provided in subsections (6) through (8),* ~~Minor~~ *minor*

subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

*(6) First and subsequent minor subdivisions must be reviewed using the administrative process provided for in subsection (7) if the proposed subdivision:*

*(a) is located in an area that is subject to and complies with zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3, that, at a minimum, address development intensity through densities, bulk and dimensional requirements, and use standards;*

*(b) has a will-serve letter from a municipal water and sewer service or by a county water and/or sewer district created under 7-13-2203 that supplies both water and sewer services;*

*(c) has existing legal and physical access to each lot; and*

*(d) does not require a variance to any of the contents of the subdivision regulations required in 76-3-504(1)(g).*

*(7) An administrative minor subdivision meeting the requirements of subsection (6) is exempt from:*

*(a) submitting the summary of probable impacts based on criteria described in 76-3-608(3) and the environmental assessment required in 76-3-603;*

*(b) the review criteria described in 76-3-608(3)(a); and*

*(c) the requirements of subsections (2) through (5) of this section.*

*(8) (a) For administrative minor subdivisions, the subdivision administrator appointed by the governing body shall:*

*(i) assume all decision-making authority of the governing body provided in 76-3-608;*

*(ii) approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement pursuant to 76-3-620 within 30 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in 76-3-604(1) through (3); and*

*(iii) immediately on a determination that the application meets the requirements of 76-3-604(1) through (3), notify by first-class mail of the pending application:*

*(A) each property owner of record whose property is immediately adjoining the land included in the preliminary plat; and*

*(B) each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.*

*(b) If a party identified in 76-3-625(3) objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application on to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision was arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination.*

*(9) As used in this section, "administrative minor subdivision" means a subdivision meeting the requirements of subsection (6). All the requirements of Title 76, chapter 3, except those exempt in subsections (7) and (8), apply to an administrative minor subdivision.*"

Approved May 2, 2023

# CHAPTER NO. 341

[SB 173]

AN ACT GENERALLY REVISING LAWS RELATED TO COUNTY ROAD ABANDONMENT; CLARIFYING THE PETITION PROCESS BY WHICH A COUNTY MAY ABANDON OR VACATE A COUNTY ROAD; UPDATING

REFERENCES FROM FREEHOLDER TO REAL PROPERTY OWNER; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2107, 7-14-2601, 7-14-2603, 7-14-2611, 7-14-2614, AND 7-14-2615, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-14-2101, MCA, is amended to read:

"**7-14-2101. General powers of county relating to roads and bridges – definitions.** (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed ~~upon~~ *on* between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed ~~upon~~ *on* between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

(d) A road on a final subdivision plat that is dedicated to public use is not considered a county road until the board of county commissioners approves by resolution the adoption of the road as a county road as provided in subsection (4)(b)(ii).

(3) The board of county commissioners may adopt regulations for unincorporated areas within a county governing:

(a) the assignment of numerical physical addresses except for roads under the jurisdiction of a federal, state, or tribal entity if that entity objects to the assignment; and

(b) the naming of roads except roads under the jurisdiction of a federal, state, or tribal entity unless that entity consents to the naming.

(4) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(b) "County road" means:

(i) a road that is petitioned by ~~freeholders~~ *real property owners*, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners;

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201; or

(v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622."

**Section 2.** Section 7-14-2103, MCA, is amended to read:

"**7-14-2103. Duties of county commissioners concerning county roads.** (1) A board of county commissioners has general supervision over the county roads within the county.

(2) A board may survey, view, lay out, record, open, work, and maintain county roads that are established in accordance with this chapter. Guideposts must be erected.

(3) A board may discontinue or abandon county roads when ~~freeholders~~ *real property owners* properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations."

**Section 3.** Section 7-14-2107, MCA, is amended to read:

"**7-14-2107. Acquisition of right-of-way.** (1) ~~Each~~ *A* board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, ~~paying for such~~ *and pay for the* right-of-way from the county road fund.

(2) ~~Each~~ *A* board shall acquire rights-of-way for county roads and discontinue or abandon them only ~~upon~~ *on* proper petition ~~therefor~~ *pursuant to Title 7, chapter 14, part 26.*

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it."

**Section 4.** Section 7-14-2601, MCA, is amended to read:

"**7-14-2601. Petition to establish, alter, or abandon a county road.** (1) Any 10, or a majority, of the ~~freeholders~~ *real property owners* of a road district *that is* taxable ~~therein~~ for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

~~(a) "board" means the board of county commissioners;~~

~~(b)~~*(a)* "abandonment" *or "vacation"* means cessation of *the* use of *a* right-of-way ~~(easement)~~ *or easement* or *of* activity ~~thereon~~ *on a right-of-way or easement* with no intention to reclaim or use *it* again ~~and is sometimes called "vacation"~~*;*

*(b) "board" means the board of county commissioners.*"

**Section 5.** Section 7-14-2603, MCA, is amended to read:

"**7-14-2603. Investigation of request concerning road -- decision.** (1) At its next regular or special meeting or in any case at a date within 30 days

after filing of any petition, the board shall ~~cause an investigation to be made of~~ *investigate* the feasibility, desirability, and cost of granting ~~the prayer of~~ the petition. The investigation ~~shall~~ *must* be sufficient to properly determine the merits or demerits of the petition.

(2) ~~No more than~~ *Only* one member of the board and the county surveyor*, or the county road supervisor if a county surveyor is not elected or appointed,* shall make the investigation.

(3) After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes."

**Section 6.** Section 7-14-2611, MCA, is amended to read:

"**7-14-2611. Alteration of road to follow subdivision or section lines.** (1) A majority of the ~~freeholders or~~ *real property* owners residing on any county road or portion ~~thereof~~ *of a county road* may petition the board in writing to ~~so~~ change the road or portion ~~as~~ to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear ~~all or such portion~~ *as much* of the cost and expense of making ~~it~~ *the petition* as the board ~~may order~~ *orders*."

**Section 7.** Section 7-14-2614, MCA, is amended to read:

"**7-14-2614. Record of road opening or alteration to be maintained.** When a county road is opened or changed, the findings of the board, the plat field notes, and the report of ~~the~~ *a licensed* surveyor ~~shall~~ *must* be recorded in the office of the county clerk in a book kept for that purpose."

**Section 8.** Section 7-14-2615, MCA, is amended to read:

"**7-14-2615. Abandonment or vacation of county roads.** (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board *on completion of the petition process under Title 7, chapter 14, part 26*.

(2) An order to abandon a county road is not valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302, unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment."

Approved May 2, 2023

## CHAPTER NO. 342

[SB 174]

AN ACT ALLOWING AN AGENCY OR POLITICAL SUBDIVISION TO PROVIDE FUNDING FOR BROADBAND INFRASTRUCTURE PROJECTS; AND AMENDING SECTION 2-17-603, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-603, MCA, is amended to read:

"**2-17-603. Government competition with private internet services providers prohibited -- exceptions.** (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state may not directly or through another agency or political subdivision be an internet services provider.

(2) (a) An agency or political subdivision may act as an internet services provider if:

(i) no private internet services provider is available within the jurisdiction served by the agency or political subdivision; or

(ii) the agency or political subdivision provided services prior to July 1, 2001.

(b) An agency or political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the agency or political subdivision.

(c) If a private internet services provider elects to provide internet services in a jurisdiction where an agency or political subdivision is providing internet services, the private internet services provider shall inform the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

(3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice.

(4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

(a) offering electronic government services to the general public;

(b) acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public; or

(c) providing funding *to private broadband service providers* for broadband service infrastructure projects ~~consistent with the provisions of Chapter 401, Laws of 2021~~*; or*

*(d) providing network infrastructure within the contiguous campus of the agency or political subdivision.*"

Approved May 2, 2023

# CHAPTER NO. 343

[SB 177]

AN ACT REVISING THE TYPES OF EMPLOYMENT BENEFITS THAT AN EMPLOYER SHALL CONSIDER AS HAVING VALUE OR COMPENSATION TO AN EMPLOYEE; REVISING THE DEFINITION OF EMPLOYMENT BENEFIT; AND AMENDING SECTION 7-1-4202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-4202, MCA, is amended to read:

"**7-1-4202. Definitions.** As used in this part, the following definitions apply:

(1) "Employee" means a person in this state who is in the service of an employer or engaged in employment as defined in 39-2-101 or under any appointment or contract of hire, written or oral, express or implied.

(2) "Employer" means a person or entity in this state that has one or more employees.

(3) "Employment benefit" means anything of value or any type of compensation, other than wages, provided by an employer to an employee without regard to whether the employer places a monetary value on the benefit or whether the benefit is subject to taxation. *The term includes but is not limited to:*

*(a) health, disability, retirement, profit-sharing, and death benefits;*

*(b) group accidental death and dismemberment benefits;*

*(c) paid or unpaid leave for holidays, sick leave, vacation, and personal necessity; and*

*(d) terms of employment, notice of advance scheduling, and additional pay for schedule changes.*

(4) "Political subdivision" means a local government unit, including but not limited to a county, city, or town established under authority of Article XI, section 1 or 6, of the Montana constitution."

Approved May 2, 2023

# CHAPTER NO. 344

[SB 178]

AN ACT GENERALLY REVISING CRYPTOCURRENCY LAWS; PROHIBITING DISCRIMINATORY DIGITAL ASSET MINING UTILITY RATES; PROHIBITING LOCAL GOVERNMENT POWERS RELATED TO DIGITAL ASSET MINING; PROHIBITING TAXATION ON THE USE OF CRYPTOCURRENCY AS A PAYMENT METHOD; PROVIDING FOR DIGITAL ASSETS AS PERSONAL PROPERTY; AMENDING SECTIONS 15-1-101 AND 70-1-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Digital asset mining ratemaking.** (1) The commission may not establish a rate classification for digital asset mining, digital asset mining businesses, or home digital asset mining that creates unduly discriminatory rates.

(2) For the purposes of this section, the following definitions apply:

(a) "Data center" means a use involving a building or premises in which the majority of the use is occupied by computers, telecommunications, or related equipment, including supporting equipment, where information is processed, transferred, and stored.

(b) "Digital asset mining" means the use of electricity to power a computer for the purpose of securing a blockchain network.

(c) "Digital asset mining business" means a group of computers working at a single site that consume more than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

(d) "Discriminatory rates" means electricity rates substantially different from other industrial similar uses of electricity in similar geographic areas after accounting for the cost of service.

(e) "Home digital asset mining" means mining digital assets in areas zoned for residential use that consume less than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

**Section 2. Digital assets taxation.** (1) Digital assets used as a method of payment may not be subject to any additional tax, withholding, assessment, or charge by the state or a local government that is based solely on the use of the digital asset as the method of payment.

(2) Nothing in this section prohibits the state or a local government from imposing or collecting a tax, withholding, assessment, or charge otherwise authorized by Titles 15 or 16.

**Section 3. Right to mine digital assets.** (1) A governing body of a city or town, the governing bodies of more than one city or town, the governing body of a county, or any combination of those governing bodies may not enact an ordinance, resolution, or rule that:

(a) imposes requirements on a digital asset mining business that are not also requirements for data centers in its area of jurisdiction;

(b) prevents a digital asset mining business from operating in an area zoned for industrial use; or

(c) prevents home digital asset mining at a private residence, except as related to existing noise ordinances.

(2) Any digital asset mining business operating on or before the [effective date of this act] may continue to operate regardless of any change in zoning or regulations.

**Section 4.** Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, including industrial property defined in subsection (1)(j), and excluding property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

*(h) The term "digital assets" means cryptocurrencies, natively electronic assets, including stable coins and nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers.*

~~(h)~~*(i)* The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

~~(i)~~*(j)* The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

~~(j)~~*(k)* "Industrial property" for purposes of this section includes all land used for industrial purposes, improvements, and buildings used to house the industrial process and all storage facilities. Under this section, industrial property does not include personal property classified and taxed under 15-6-135 or 15-6-138.

~~(k)~~*(l)* The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

~~(l)~~*(m)* The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

~~(m)~~*(n)* (i) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection (1)~~(o)~~*(p)*, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

~~(n)~~*(o)* The term "market value" means the value of property as provided in 15-8-111.

~~(o)~~*(p)* The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

~~(p)~~*(q)* The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

~~(q)~~*(r)* The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(r)~~*(s)* The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

~~(s)~~*(t)* The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

~~(t)~~*(u)* "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

~~(u)~~*(v)* "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(v)~~*(w)* The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

~~(w)~~*(x)* The term "taxable value" means the market value multiplied by the classification tax rate as provided for in Title 15, chapter 6, part 1.

~~(x)~~*(y)* The term "taxes" in relation to property under 15-6-133, 15-6-134, or 15-6-143 is the amount owed by a taxpayer that is the market value multiplied by the tax rate multiplied by the applicable mills, exclusive of local fees and assessments.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board", "Montana board", or "board" when used without other qualification means the Montana tax appeal board."

**Section 5.** Section 70-1-108, MCA, is amended to read:

"**70-1-108. Personal property defined.** *(1)* Every kind of property that is not real is personal.

*(2) Digital assets are considered personal property.*

*(3) For the purposes of this section, "digital assets" means cryptocurrencies, natively electronic assets, including stable coins and nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers.*"

**Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, and the provisions of Title 76, chapter 2, apply to [section 3].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 2023

# CHAPTER NO. 345

[SB 197]

AN ACT INCREASING THE NUMBER OF RACES INCLUDED IN THE POSTELECTION AUDIT; AMENDING SECTION 13-17-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-17-503, MCA, is amended to read:

"**13-17-503. Random-sample audit of vote-counting machines required -- rulemaking authority.** (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least ~~5%~~ *10%* of the precincts in each county or a minimum of ~~one~~ *two* ~~precinct~~ *precincts* in each county, whichever is greater; and

(b) ~~an election~~ *elections* for:

(i) ~~one~~ *two* statewide office ~~race~~ *races*, if any;

(ii) ~~one~~ *two* federal office ~~race~~ *races*;

(iii) ~~one~~ *two* legislative office ~~race~~ *races*; and

(iv) ~~one~~ *two* statewide ballot ~~issue~~ *issues* if ~~a~~ statewide ballot ~~issue was~~ *issues were* on the ballot.

(4) The audit may not include:

(a) a retention election for a judicial candidate; or

(b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

(a) the county does not use a vote-counting machine; or

(b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

(a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 2023

# CHAPTER NO. 346

[SB 199]

AN ACT REVISING ELIGIBILITY FOR RESORT COMMUNITIES AND RESORT AREAS; REQUIRING A DESIGNATION FROM THE DEPARTMENT OF COMMERCE WITHIN 2 YEARS OF THE PETITION; REVISING PROVISIONS RELATED TO ECONOMIC ACTIVITY WITHIN A RESORT COMMUNITY OR RESORT AREA; REVISING DEFINITIONS; AMENDING SECTION 7-6-1501, 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 7-6-1501, MCA, is amended to read:

"**7-6-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Board of directors" means the board of directors of the resort area district.

(2) "Infrastructure" means tangible facilities and assets related to water, sewer, wastewater treatment, storm water, solid waste and utilities systems, fire protection, ambulance and law enforcement, roads, bridges, and other transportation needs.

(3) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(4) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(5) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(6) "Qualified elector" means a person who is qualified to vote under 13-1-111 and is a resident of a resort community, resort area, or proposed or established resort area district.

(7) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census;

(c) derives ~~the major portion~~ *more than 50%* of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production *and excluding economic activity from health care, schools, government, and other services that primarily benefit residents*; and

(d) has been designated by the department of commerce as a resort area *not more than 2 years* prior to its establishment by the county commissioners as provided in 7-6-1508.

(8) "Resort area district" means a district created under 7-6-1532 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550 that has been established as a resort area under 7-6-1508.

(9) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than 5,500 according to the most recent federal census;

(c) derives ~~the primary portion~~ *more than 50%* of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production *and excluding economic activity from health care, schools, government, and other services that primarily benefit residents*; and

(d) has been designated by the department of commerce as a resort community *not more than 2 years before the petition of the electors or resolution of the governing body*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to resort community or resort area petitions and resolutions adopted after [the effective date of this act].

Approved May 2, 2023

# CHAPTER NO. 347

[SB 202]

AN ACT CLARIFYING EXEMPTIONS FOR PRODUCERS OF HOMEMADE FOOD OR HOMEMADE FOOD PRODUCTS; REVISING REQUIREMENTS FOR FARMER'S MARKETS; CLARIFYING COUNTY COMMISSION REGULATION OF FARMER'S MARKETS; CLARIFYING DEFINITIONS; RESTRICTING RULEMAKING AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; AMENDING SECTIONS 7-21-3301, 50-49-202, 50-49-203, 50-50-102, 50-50-103, AND 50-50-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-21-3301, MCA, is amended to read:

"**7-21-3301. Establishment of markets and market houses.** In addition to the powers specifically granted by the laws of the state and ~~such~~ other limitations and exceptions contained in ~~the existing statutes of the state in reference to~~ *law regarding* the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county ~~in Montana~~ shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets,

and to acquire the property necessary ~~therefor~~ *for this. For the establishment and regulation of farmer's markets, the boards of county commissioners are subject to the requirements of Title 50, chapter 50, part 1.*"

**Section 2.** Section 50-49-202, MCA, is amended to read:

"**50-49-202. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Deliver" means to transfer a product as a result of a transaction between a producer and an informed end consumer. The action may be performed by the producer or the producer's designated agent at a farm, ranch, home, office, traditional community social event, *other private property,* or another location agreed to between the producer or agent and the informed end consumer.

(2) "Home consumption" means:

(a) the consumption of food or a food product in a private home; or

(b) the consumption of food or a food product from a private home.

(3) "Homemade" means food or a food product that is prepared in a private home and that is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) "Informed end consumer" means a person who is the last person to purchase a product, does not resell the product, and has been informed that the product is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(5) (a) "Producer" means a person who harvests, produces, or prepares a product that may be consumed as homemade food or a homemade food product. The term includes a person operating a small dairy.

(b) The term does not include the entities listed in 50-49-203(1)(c).

(6) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

(7) "Traditional community social event" means an event at which people gather as part of a community for the benefit of those gathering or for the benefit of the community, including but not limited to a:

(a) wedding;

(b) funeral;

(c) church or religious social;

(d) school event;

(e) farmer's market;

(f) potluck;

(g) neighborhood gathering;

(h) club meeting or social; or

(i) youth or adult outdoor club or sporting event.

(8) "Transaction" means an exchange of buying and selling, including the transfer of a product by delivery."

**Section 3.** Section 50-49-203, MCA, is amended to read:

"**50-49-203. Exemptions from regulations -- transactions -- information required -- exceptions.** (1) (a) A state agency or an agency of a political subdivision of the state may not require licensure, permitting, certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product under this part.

(b) This part does not preclude an agency from providing assistance, consultation, or inspection requested by a producer.

(c) A producer is not:

(i) a retail food establishment, a cottage food operation, or a temporary food establishment, as each term is defined in 50-50-102;

(ii) a wholesale food manufacturing establishment, as defined in 50-57-102; or

(iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.

(d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or standards of 30-12-301; Title 50, ~~chapter 31~~ *chapters 31 and 50*; or Title 81, chapters 2, 9, 21, 22, or 23.

(2) Transactions pursuant to this part:

(a) must be directly between the producer and the informed end consumer;

(b) must be only for home consumption or consumption at a traditional community social event; ~~and~~

(c) must occur only in this state and may not involve interstate commerce*; and*

*(d) are not subject to regulation by a board of county commissioners pursuant to 7-21-3301.*

(3) Except as provided in subsection (7), a producer shall inform an end consumer that any homemade food or homemade food product sold through ranch, farm, or home-based sales pursuant to this part has not been licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) Except for raw, unprocessed fruit and vegetables, homemade food may not be sold or used in a retail food establishment, as defined in 50-50-102, unless the food has been licensed, permitted, certified, packaged, labeled, and inspected as required by law.

(5) Except as provided in subsection (6) and pursuant to this part, a producer may donate homemade food or homemade food products to a traditional community social event.

(6) A producer may not donate milk to a traditional community social event.

(7) (a) Except for a temporary food establishment subject to 50-50-120, meat or meat products processed at a state-licensed establishment or a federally approved meat establishment, by the producer, or by any third party may not be used in preparation of homemade food that is sold pursuant to a transaction provided for in this part.

(b) Subsection (7)(a) does not apply to a producer who slaughters fewer than 1,000 poultry birds a year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175. The poultry or poultry products may not be adulterated or misbranded.

(8) A small dairy shall:

(a) sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell count of milk or cream sold as homemade food pursuant to this part;

(b) sample, test, or retest every year for brucellosis for every lactating cow, lactating goat, or lactating sheep that is part of the small dairy; and

(c) maintain records for 2 years of all previous samples, tests, or retests, which must be provided to the department of livestock if the department suspects the small dairy is causing a foodborne illness."

**Section 4.** Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Consumer" means a person who is a member of the public, takes possession of food, and does not offer the food for resale.

(2) "Contract cook" means a person who specializes in a home food service and prepares food in an individual's domestic residence only for members of that household and house guests.

(3) "Cottage food operation" means a person who provides, manufactures, or packages cottage food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state.

(4) "Cottage food products" means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other similar foods that are not potentially hazardous may be defined by the department by rule.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

(7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure, whether rented, leased, or owned by the person in charge of the cottage food operation.

(8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority under 7-21-3301.

(9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(10) "Local board of health" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(12) "Meat market" means an operation and buildings or structures in connection with the meat market that are used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(13) (a) "Mobile food establishment" means a retail food establishment that serves or sells food from a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

(b) The term does not include:

(i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or the federal government;

(ii) a cottage food operation transport vehicle; or

(iii) a concession stand designed to operate as a temporary food establishment.

(14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(15) "Person" means an individual, a partnership, a corporation, an association, a cooperative group, the state or a political subdivision of the state, or other entity.

(16) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.

(17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits, vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity in a container does not alter the raw state.

(b) The term does not include an agricultural commodity that has been altered by being:

~~(a)~~*(i)* cooked;

~~(b)~~*(ii)* canned;

~~(c)~~*(iii)* preserved, except for drying;

~~(d)~~*(iv)* combined with other food products; or

~~(e)~~*(v)* peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Registered area" means the portion of a domestic residence that has been registered as provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

(19) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(20) "Retail" means the provision of food directly to the consumer.

(21) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

(i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides food for human consumption at a venue that may include:

(A) a restaurant;

(B) a market;

(C) a satellite or catered feeding location;

(D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance used to transport people;

(E) a vending location;

(F) a conveyance used to transport people;

(G) an institution; or

(H) a food bank; and

(ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.

(b) The term is not dependent on whether consumption is on or off the premises or whether there is a charge for food served to the public.

(c) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots;

(iii) growers or harvesters of raw agricultural commodities;

(iv) a cottage food operation;

(v) a person that sells or serves only commercially prepackaged foods that are not potentially hazardous;

(vi) a food stand that offers raw agricultural commodities;

(vii) a wholesale food establishment, including those wholesale food establishments that are located on the same premises as a retail food establishment;

(viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a nonprofit organization as provided in subsection (21)(c)(xiii);

(ix) custom meat and game animal processors that receive from an owner the remains of a carcass and process those remains for delivery to the owner for the exclusive use in the owner's household by the owner or members of the owner's household, including the owner's family pets, or of the owner's

nonpaying guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food products and parts that are to be prepared for sale.

(x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the public over no more than 4 days in a 12-month period;

(xi) a private organization that serves food only to its members and their guests;

(xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests and day visitors;

(xiii) a nonprofit organization that operates a temporary food establishment under a permit as provided in 50-50-120;

(xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, *homemade food or a homemade food product pursuant to Title 50, chapter 49,* or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

(xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure under 52-2-721(1)(a);

(xvi) a private domestic residence that receives catered or home-delivered food;

(xvii) a contract cook; or

(xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

(22) "Temporary food establishment" means a retail food establishment that in a licensing year either:

(a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or

(b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.

(23) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

**Section 5.** Section 50-50-103, MCA, is amended to read:

"**50-50-103. Department authorized to adopt rules -- advisory council.** (1) Except as provided in subsection (3), to protect public health, the department may adopt rules relating to:

(a) the operation of retail food establishments and cottage food operations. The rules may address sanitation standards related to food, personnel, food equipment and utensils, and facilities and may address other controls, construction and fixtures, and housekeeping.

(b) licensure of retail food establishments; and

(c) registration for cottage food operations, including the fees to be charged for registration. The department shall specify in rule any fees for farmer's markets and cottage food operations that may be imposed by a regulatory authority.

(2) The department may adopt rules regarding permitting fees, statewide standards, plans to be provided by mobile food establishments as part of a mobile food establishment's licensing requirements, and an appeals process at the state and local levels.

(3) The department and local boards of health may not adopt rules or ordinances, respectively, that prohibit:

(a) the sale of cottage food products; ~~or~~

(b) the use of commercially processed wild game or fish meat in meals served by nonprofit retail food establishments pursuant to 50-50-126*; or*

*(c) the sale of homemade food or a homemade food product pursuant to Title 50, chapter 49.*

(4) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the departments of public health and human services, agriculture, and livestock and of registered sanitarians from local regulatory authorities and no more than six members of the public. Each department head shall appoint two of the public members and confer with other department heads to provide geographic representation. Each public member must be an owner or employee of a licensed retail food establishment or a representative of the food industry.

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council."

**Section 6.** Section 50-50-121, MCA, is amended to read:

"**50-50-121. Requirements for farmer's markets.** (1) (a) A person selling food that is not potentially hazardous, including food listed in subsection (2), at a farmer's market is not a retail food establishment.

(b) A person selling food that is not potentially hazardous or otherwise listed in subsection (2) if selling only at a farmer's market is not required to register as a cottage food operation.

(2) Foods that are not potentially hazardous or are otherwise eligible to be sold at a farmer's market include:

(a) whole shell eggs if the whole shell eggs are clean, free of cracks, and stored in clean cartons at a temperature established by the department by rule;

(b) hot coffee or hot tea if the person selling the hot coffee or hot tea does not provide or include fresh milk or cream;

(c) raw agricultural commodities; ~~and~~

(d) food identified by the department by rule as not being a potentially hazardous food*; and*

*(e) homemade food or a homemade food product pursuant to Title 50, chapter 49.*

(3) A farmer's market authorized by a municipal or county authority shall keep registration records of all persons and organizations that serve or sell food exempt from licensure at the market, including food that does not meet the definition of potentially hazardous food.

(4) The registration records must include the name, address, and telephone number of the seller or server as well as the types of products sold or served and the date on which the products were sold or served.

(5) A farmer's market under this section shall make registration records available upon request to the local health authority.

(6) ~~Food~~ *Except for homemade food or a homemade food product pursuant to Title 50, chapter 49, food* sold in a farmer's market must, if sold in a container, have a label similar to a label required of a cottage food product under 50-50-116."

Approved May 2, 2023

# CHAPTER NO. 348

[SB 213]

AN ACT REVISING LAWS RELATED TO SCHOOL SAFETY; REQUIRING ANNUAL REVIEW OF SCHOOL SAFETY OR EMERGENCY OPERATIONS PLANS BY SCHOOL DISTRICT TRUSTEES; CLARIFYING THE ABILITY TO USE SCHOOL SAFETY FUNDS FOR COMMUNITYWIDE PROGRAMS AND TRAINING; REQUIRING COUNTY OR REGIONAL INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAMS TO ADOPT WRITTEN AGREEMENTS FOR OPERATIONS; AMENDING SECTIONS 20-1-401, 20-9-236, AND 52-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-401, MCA, is amended to read:

"**20-1-401. Disaster drills to be conducted regularly -- districts to identify disaster risks and adopt school safety plan.** (1) As used in this part, "disaster" means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan or emergency operations plan to address those hazards.

(3) *(a)* A board of trustees shall adopt a school safety plan or emergency operations plan that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination ~~on issues of school safety, if any,~~ with the county or regional interdisciplinary child information and school safety team provided for in 52-2-211. ~~The trustees shall certify to the office of public instruction that a school safety plan or emergency operations plan has been adopted.~~ The trustees shall review the school safety plan or emergency operations plan ~~periodically~~ *at least annually* and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety.

*(b) The school safety plan or emergency operations plan must include the following threat assessment practices:*

*(i) the adoption of a threat assessment protocol, outlining policies and procedures for implementation when there is notification of a student threat of harm to others or property; and*

*(ii) an identified threat assessment team, composed of key staff, that meets at least monthly and may include behavioral threat assessment addressing students in need of academic and behavioral supports or interventions.*

*(c) The trustees shall certify annually to the office of public instruction that the adopted school safety plan or emergency operations plan has been reviewed.* Once the trustees have made the certification to the office of public instruction,

the trustees may transfer funds pursuant to 20-9-236 to make improvements to school safety and security."

**Section 2.** Section 20-9-236, MCA, is amended to read:

"**20-9-236. Transfer of funds -- improvements to school safety and security.** (1) A school district that has certified to the office of public instruction a current school safety plan or emergency operations plan pursuant to 20-1-401 may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school and student safety and security as follows:

(a) planning for improvements to and maintenance of school and student safety, including but not limited to the cost of staffing for or services provided by architects, engineers, school resource officers, counselors, and other staff or consultants assisting the district with improvements to school and student safety and security;

(b) programs *and training for school employees, students, parents, and community members approved by the trustees* to support school and student safety and security, including but not limited to active shooter training, ~~threat assessments~~ *threat assessment practices pursuant to 20-1-401(3)(b)*, and restorative justice;

(c) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(d) installing or updating bullet-resistant windows and barriers; and

(e) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds."

**Section 3.** Section 52-2-211, MCA, is amended to read:

"**52-2-211. County or regional interdisciplinary child information and school safety team.** (1) The county commissioners of each county shall ensure the formation of a county or regional interdisciplinary child information and school safety team that includes representatives authorized by any of the following:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force;

(g) any board of trustees of a public school district operating within the boundaries of the county; and

(h) the department of corrections.

(2) Officials under subsection (1) from one county may also cooperate with officials under subsection (1) from any other county to form regional

interdisciplinary child information and school safety teams, in which case access to information under 41-5-215(2) is authorized for all members of the regional team for each county participating in a regional team. The formation of regional teams must be formalized by written agreement between participating counties.

(3) The persons and agencies listed in subsection (1) or (2) may by majority vote allow the following persons to join the team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(4) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(5) The purpose of the team is to ensure the timely exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention, and of information relating to issues of school safety. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) may not be disseminated beyond the organizations or departments that have an authorized member on the team under this section.

(6) ~~A written agreement may be created to provide~~ *The team shall adopt a written agreement* for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team. Any agreement created may not limit access of any team member to information under 41-5-215(2)*, and any delay in or failure to finalize an agreement may not be used by any member of the team to impede the timely exchange and sharing of information under subsection (5) of this section.*

(7) An interdisciplinary child information and school safety team shall coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(8) To the extent that the county or regional interdisciplinary child information and school safety team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The officials and authorities to whom the information is disclosed may not disclose any information to any other party without the prior written consent of the parent or guardian of the student.

(9) The county superintendent of schools shall provide to the office of public instruction a current copy of ~~any~~ *the* written agreement under this section no later than September 1. The office of public instruction shall report to the education interim committee in accordance with 5-11-210 any county that has not provided a written agreement under this section."

**Section 4. Effective date.** [This act] is effective July 1, 2023.

Approved May 2, 2023

# CHAPTER NO. 349

[SB 214]

AN ACT ENACTING THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF APPLICANTS; AND AMENDING SECTIONS 37-15-202 AND 37-15-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Enactment -- provisions.** The Audiology and Speech-Language Pathology Interstate Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1
PURPOSE

The purpose of this compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient/client/student is located at the time of the patient/client/student encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

(1) increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;

(2) enhance the states' ability to protect the public's health and safety;

(3) encourage the cooperation of member states in regulating multistate audiology and speech-language pathology practice;

(4) support spouses of relocating active-duty military personnel;

(5) enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(7) allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.

SECTION 2
DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

(1) "Active-duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to Title 10, chapter 1209 and 1211, of the United States Code.

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

(3) "Alternative program" means a nondisciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.

(4) "Audiologist" means an individual who is licensed by a state to practice audiology.

(5) "Audiology" means the care and services provided by a licensed audiologist as set forth in the member state's statutes and rules.

(6) "Audiology and speech-language pathology compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(7) "Audiology and speech-language pathology licensing board", "audiology licensing board", "speech-language pathology licensing board", or "licensing board" means the agency of a state that is responsible for the licensing and regulation of audiologists and/or speech-language pathologists.

(8) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient/client/student is located at the time of the patient/client/student encounter.

(9) "Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-language pathologist to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(10) "Data system" means a repository of information about licensees, including but not limited to continuing education, examination, licensure, investigative, compact privilege, and adverse action.

(11) "Encumbered license" means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and said adverse action has been reported to the national practitioner data bank (NPDB).

(12) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(13) "Home state" means the member state that is the licensee's primary state of residence.

(14) "Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

(15) "Licensee" means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.

(16) "Member state" means a state that has enacted the compact.

(17) "Privilege to practice" means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.

(18) "Remote state" means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.

(19) "Rule" means a regulation, principle, or directive promulgated by the commission that has the force of law.

(20) "Single-state license" means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

(21) "Speech-language pathologist" means an individual who is licensed by a state to practice speech-language pathology.

(22) "Speech-language pathology" means the care and services provided by a licensed speech-language pathologist as set forth in the member state's statutes and rules.

(23) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of audiology and speech-language pathology.

(24) "State practice laws" means a member state's laws, rules, and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.

(25) "Telehealth" means the application of telecommunication technology to deliver audiology or speech-language pathology services at a distance for assessment, intervention, and/or consultation.

SECTION 3

STATE PARTICIPATION IN THE COMPACT

(1) A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state must be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in each member state.

(2) A state shall implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

(a) A member state shall fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.

(b) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(3) Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or privilege to practice held by the applicant, and whether any adverse action has been taken against any license or privilege to practice held by the applicant.

(4) Each member state shall require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(5) For an audiologist:

(a) must meet one of the following educational requirements:

(i) on or before December 31, 2007, has graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the council for higher education accreditation, or its successor, or by the United States department of education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

(ii) on or after January 1, 2008, has graduated with a doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the council for higher education accreditation, or its successor, or by the United States department of education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

(iii) has graduated from an audiology program that is housed in an institution of higher education outside of the United States:

(A) for which the program and institution have been approved by the authorized accrediting body in the applicable country; and

(B) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

(b) has completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the commission;

(c) has successfully passed a national examination approved by the commission;

(d) holds an active, unencumbered license;

(e) has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law;

(f) has a valid United States social security or national practitioner identification number.

(6) For a speech-language pathologist:

(a) must meet one of the following educational requirements:

(i) has graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States department of education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

(ii) has graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States:

(A) for which the program and institution have been approved by the authorized accrediting body in the applicable country; and

(B) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

(b) has completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the commission;

(c) has completed a supervised postgraduate professional experience as required by the commission;

(d) has successfully passed a national examination approved by the commission;

(e) holds an active, unencumbered license;

(f) has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law;

(g) has a valid United States social security or national practitioner identification number.

(7) The privilege to practice is derived from the home state license.

(8) An audiologist or speech-language pathologist practicing in a member state shall comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of audiology and speech-language pathology must include all audiology and speech-language pathology practice as defined by the state practice laws of the member state

in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice must subject an audiologist or speech language pathologist to the jurisdiction of the licensing board, the courts, and the laws of the member state in which the client is located at the time service is provided.

(9) Individuals not residing in a member state must continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals may not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this compact may affect the requirements established by a member state for the issuance of a single-state license.

(10) Member states may charge a fee for granting a compact privilege.

(11) Member states shall comply with the bylaws and rules and regulations of the commission.

SECTION 4
COMPACT PRIVILEGE

(1) To exercise the compact privilege under the terms and provisions of the compact, the audiologist or speech-language pathologist:

(a) must hold an active license in the home state;

(b) must have no encumbrance on any state license;

(c) must be eligible for a compact privilege in any member state in accordance with section 3;

(d) may not have had any adverse action against any license or compact privilege within the previous 2 years from the date of application;

(e) shall notify the commission that the licensee is seeking the compact privilege within a remote state(s);

(f) shall pay any applicable fees, including any state fee, for the compact privilege;

(g) shall report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(2) For the purposes of the compact privilege, an audiologist or speech-language pathologist may only hold one home state license at a time.

(3) Except as provided in section 6, if an audiologist or speech-language pathologist changes primary state of residence by moving between two member states, the audiologist or speech-language pathologist shall apply for licensure in the new home state, and the license issued by the prior home state must be deactivated in accordance with applicable rules adopted by the commission.

(4) The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.

(5) A license may not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.

(6) If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a nonmember state, the license issued by the prior home state must convert to a single-state license, valid only in the former home state.

(7) The compact privilege is valid until the expiration date of the home state license. The licensee shall comply with the requirements of section 4(1) to maintain the compact privilege in the remote state.

(8) A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(9) A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens.

(10) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(a) the home state license is no longer encumbered; and

(b) 2 years have elapsed from the date of the adverse action.

(11) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of section 4(1) to obtain a compact privilege in any remote state.

(12) Once the requirements of section 4(10) have been met, the licensee must meet the requirements in section 4(1) to obtain a compact privilege in a remote state.

SECTION 5

COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with section 3 and under rules promulgated by the commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

SECTION 6

ACTIVE-DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active-duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual may only change their home state through application for licensure in the new state.

SECTION 7

ADVERSE ACTIONS

(1) In addition to the other powers conferred by state law, a remote state must have the authority, in accordance with existing state due process law, to:

(a) take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state;

(b) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(c) Only the home state may have the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.

(2) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine the appropriate action.

(3) The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state must also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.

(4) If otherwise permitted by state law, the member state may recover from the affected audiologist or speech-language pathologist the costs of the investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech language pathologist.

(5) The member state may take adverse action based on the factual findings of the remote state, provided that the member state follows the member state's own procedures for taking the adverse action.

(6) Joint investigations.

(a) In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(7) If adverse action is taken by the home state against an audiologist's or speech-language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech-language pathologist's license must include a statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.

(8) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(9) Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

SECTION 8

ESTABLISHMENT OF THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the audiology and speech-language pathology compact commission.

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(2) Membership, voting, and meetings.

(a) Each member state must have two delegates selected by that member state's licensing board. The delegates must be current members of the licensing board. One must be an audiologist and one must be a speech-language pathologist.

(b) An additional five delegates, who are either a public member or board administrator from a state licensing board, must be chosen by the executive committee from a pool of nominees provided by the commission at large.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state board shall fill any vacancy occurring on the commission within 90 days.

(e) Each delegate must be entitled to one vote with regard to the promulgation of rules and creation of bylaws and must otherwise have an opportunity to participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(g) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(3) The commission must have the following powers and duties:

(a) establish the fiscal year of the commission;

(b) establish bylaws;

(c) establish a code of ethics;

(d) maintain its financial records in accordance with the bylaws;

(e) meet and take actions as are consistent with the provisions of this compact and the bylaws;

(f) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules must have the force and effect of law and must be binding in all member states.

(g) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law is not affected;

(h) purchase and maintain insurance and bonds;

(i) borrow, accept, or contract for services of personnel, including but not limited to employees of a member state;

(j) hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(k) accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(l) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety;

(m) sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(n) establish a budget and make expenditures;

(o) borrow money;

(p) appoint committees, including standing committees composed of members, and other interested persons as may be designated in the compact and the bylaws;

(q) provide and receive information from, and cooperate with, law enforcement agencies;

(r) establish and elect an executive committee; and

(s) perform other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.

(4) The executive committee.

The executive committee must have the power to act on behalf of the commission according to the terms of this compact:

(a) The executive committee must be composed of 10 members:

(i) seven voting members who are elected by the commission from the current membership of the commission;

(ii) two ex-officio members, consisting of one nonvoting member from a recognized national audiology professional association and one nonvoting member from a recognized national speech-language pathology association; and

(iii) one ex-officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.

(5) The ex-officio members must be selected by their respective organizations.

(a) The commission may remove any member of the executive committee as provided in bylaws.

(b) The executive committee shall meet at least annually.

(c) The executive committee must have the following duties and responsibilities:

(i) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(ii) ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) prepare and recommend the budget;

(iv) maintain financial records on behalf of the commission;

(v) monitor compact compliance of member states and provide compliance reports to the commission;

(vi) establish additional committees as necessary; and

(vii) other duties as provided in rules or bylaws.

(d) Meetings of the commission.

All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provision in section 10.

(e) The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigative records compiled for law enforcement purposes;

(ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) matters specifically exempted from disclosure by federal or member state statute.

(f) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(g) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(h) Financing of the commission.

(i) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(ii) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(iii) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(i) The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(j) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(6) Defense and indemnification.

(a) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining his or her own counsel, and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(b) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising

out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 9
DATA SYSTEM

(1) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(a) identifying information;

(b) licensure data;

(c) adverse actions against a license or compact privilege;

(d) nonconfidential information related to alternative program participation;

(e) any denial of application for licensure, and the reason(s) for denial; and

(f) other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state may only be available to other member states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state must be available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

SECTION 10
RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments must become binding as of the date specified in each rule or amendment.

(2) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, the rule must have no further force and effect in any member state.

(3) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(4) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) on the website of the commission or other publicly accessible platform; and

(b) on the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(5) The notice of proposed rulemaking must include:

(a) the proposed time, date, and location of the meeting in which the rule is to be considered and voted upon;

(b) the text of the proposed rule or amendment and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

(d) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(6) Prior to the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

(7) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(a) at least 25 persons;

(b) a state or federal governmental subdivision or agency; or

(c) an association having at least 25 members.

(8) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded. A copy of the recording must be made available on request.

(d) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(10) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public meeting.

(11) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(12) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(a) meet an imminent threat to public health, safety, or welfare;

(b) prevent a loss of commission or member state funds; or

(c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(13) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision must be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision must take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 11

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(1) Dispute resolution.

(a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(2) Enforcement.

(a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of litigation, including reasonable attorney's fees.

(c) The remedies herein may not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 12

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact must come into effect on the date on which the compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, must be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules must be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission must have full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the same.

(a) A member state's withdrawal may not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal may not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(4) Nothing contained in this compact may be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) The compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 13

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 14

BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(2) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(3) All lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(4) All agreements between the commission and the member states are binding in accordance with their terms.

(5) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Section 2. Criminal background check.** (1) As provided in 37-1-307, the board shall require each applicant for licensure as a speech-language pathologist or audiologist to submit a full set of the applicant's fingerprints to the board to facilitate a fingerprint-based criminal background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.

(2) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation.

**Section 3.** Section 37-15-202, MCA, is amended to read:

"**37-15-202. Powers and duties of board and department.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of applicants;

(c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(d) adopt rules, including but not limited to those governing ethical standards of practice or standards for telehealth under this chapter;

(e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses for the prosecution;

(g) adopt a seal by which the board shall authenticate its proceedings*; and*

*(h) extend compact privileges as described in [section 1].*

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules that are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law."

**Section 4.** Section 37-15-314, MCA, is amended to read:

"**37-15-314. Telehealth -- authorization -- assistants.** (1) An audiologist, speech-language pathologist, speech-language pathology assistant, or audiology assistant who is licensed under and meets the requirements of this chapter may engage in telehealth in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist, speech-language pathologist, speech-language pathology assistant, or audiology assistant who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through telehealth without first obtaining a license from the board in accordance with this part *or pursuant to the Audiology and Speech-Language Pathology Interstate Compact provided for in [section 1].*

(3) An audiology assistant or a speech-language pathology assistant may engage in telehealth or provide other services as directed by a speech-language pathologist or audiologist that otherwise comply with board rules for scope of practice by speech-language pathology assistants and audiology assistants."

**Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 15, and the provisions of Title 37, chapter 15, apply to [sections 1 and 2].

Approved May 2, 2023

# CHAPTER NO. 350

[SB 220]

AN ACT REVISING LAWS RELATED TO MUNICIPAL ANNEXATION; CLARIFYING THAT COUNTY PARKS AND CERTAIN PUBLIC

INFRASTRUCTURE ARE INCLUDED IN ANNEXATION; AND AMENDING SECTION 7-2-4211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-2-4211, MCA, is amended to read:

"**7-2-4211. Inclusion of roads, rights-of-way, and parks in annexation.** *(1)* In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include:

~~(1)~~*(a) as allowed in 7-16-2324,* parks created pursuant to Title 76, chapter 3, ~~except for county-owned parks~~ *unless expressly excluded from annexation by a county*, that are wholly surrounded by other property being or already annexed; ~~and~~

~~(2)~~*(b)* the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed*; and*

*(c) public infrastructure and associated public land and easements, including any infrastructure installed under public streets or roadways that are wholly surrounded by other property being or already annexed or within any public streets or roads, including the rights-of-way, that are within or adjacent to property being annexed unless expressly excluded from annexation by a county.*

*(2) As used in this section, "public infrastructure" means infrastructure owned, operated, and managed by a county or municipality, including drinking water systems, storm water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, streets, and bridges.*"

Approved May 2, 2023

# CHAPTER NO. 351

[SB 234]

AN ACT REVISING LAWS RELATED TO THE INSTALLATION OF VENDING MACHINES ON STATE HIGHWAY RIGHTS-OF-WAY; AUTHORIZING THE DEPARTMENT TO ISSUE AN INVITATION FOR BID; AND AMENDING SECTION 60-5-110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-5-110, MCA, is amended to read:

"**60-5-110. Commercial enterprise or structure prohibited -- exceptions.** (1) Except as provided in 60-5-505 and subsections (2) and (3) of this section, a commercial enterprise or structure may not be operated on the publicly owned or leased right-of-way of a controlled-access highway or controlled-access facility.

(2) The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the highway nonrestricted account provided for in 15-70-125 to be used for highway purposes.

(3) (a) The department may, under terms and conditions that it considers appropriate, contract with a blind vendor certified pursuant to Title 18, chapter 5, part 4, *or issue an invitation for bid subject to the preference to blind*

*persons set forth in 18-5-502* for the installation of vending machines on the right-of-way of any state highway, including a controlled-access facility.

(b) A blind vendor installing a vending machine pursuant to this subsection (3) is subject to the applicable provisions of Title 18, chapter 5, part 4."

Approved May 2, 2023

# CHAPTER NO. 352

[SB 236]

AN ACT ESTABLISHING STANDARDS TO BE SATISFIED BY A THIRD-PARTY CLAIMANT WHEN DELIVERING A WRITTEN TIME-LIMITED DEMAND TO AN INSURER; REQUIRING A THIRD-PARTY CLAIMANT TO DELIVER ALL AVAILABLE AND SUPPORTING DOCUMENTS, RECORDS, AND INFORMATION TO AN INSURER WHEN DELIVERING A TIME-LIMITED DEMAND; PROVIDING A FAIR AND REASONABLE OPPORTUNITY FOR AN INSURER TO TIMELY INVESTIGATE AND EVALUATE CLAIMS PRESENTED TO THE INSURER WITHOUT THE RISK OR EXPOSURE OF HAVING AN UNFAIR CLAIM SETTLEMENT PRACTICES OR INSURANCE BAD FAITH CLAIM ALLEGED AGAINST THE INSURER OR UNREASONABLY CREATING ADDITIONAL LIABILITY EXPOSURE TO THE INSURER BEYOND THE LIMITS OF LIABILITY SET FORTH IN THE INSURANCE POLICY; AND PROMOTING FAIR AND REASONABLE SETTLEMENT OF CLAIMS WHILE ALLOWING INSURERS A REASONABLE OPPORTUNITY TO INVESTIGATE AND EVALUATE CLAIMS AND TO PROMPTLY AND FAIRLY SETTLE CLAIMS TO PROTECT POLICYHOLDERS.

WHEREAS, it is declared to be the public policy of this state that fair, reasonable, and prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, the public policy of this state is not promoted by the making, presenting, or delivering of claims or settlement demands to insurers without all available and supporting documents, records, and information reasonably necessary and appropriate for an insurer to timely, fairly, and reasonably investigate and evaluate the claims or settlement demands; and

WHEREAS, both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to timely and fairly investigate and evaluate claims presented without the risk or exposure of having an unfair claim settlement practices or insurance bad faith claim asserted against the insurer or unreasonably creating additional liability exposure to the insurer beyond the limits of liability set forth in the insurance policy; and

WHEREAS, this policy benefits the citizens of this state because it promotes fair, reasonable, and prompt settlements of claims, and reduces the nature, extent, and duration of costly litigation in the courts of this state, while allowing insurers a reasonable opportunity to investigate and evaluate claims and to reasonably and fairly settle claims to protect policyholders and claimants.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time-limited demands -- requirements -- insurer's fair and reasonable opportunity to investigate and evaluate claims.** (1) A

time-limited demand from a claimant to an insurer offering to settle any claim must:

(a) reference this section;

(b) be in writing and labeled "time sensitive" at the top of the first page of the writing setting forth the required material terms of the offer to settle set forth in subsection (1)(d);

(c) be sent certified mail, return-receipt requested, to the insurer of the allegedly responsible party; and

(d) contain the following material terms:

(i) the name of the allegedly responsible party;

(ii) the time period within which the offer to settle shall remain open for acceptance by the allegedly responsible party's insurer, which may not be less than 60 days or the first business day following the 60th day when that day falls on a weekend or holiday;

(iii) the amount of the monetary payment requested to settle the claim, together with a description of any other form of consideration sought to settle the claim;

(iv) the date and location of the damage, loss, professional negligence, or breach of fiduciary duty;

(v) a reasonable description of the nature and extent of all known injuries, damages, and losses sustained by the claimant;

(vi) the party or parties to be released if the insurer accepts the time-limited demand;

(vii) a description of the claim or claims to be released if the time-limited demand is accepted; and

(viii) disclosure of eligibility, or information sufficient to verify eligibility, for medicare, medicaid, any other federal or state benefit program, and any other known liens or assignments granted by the claimant that apply to any of the damages claimed.

(2) The time period within which an insurer may accept a time-limited demand commences on the date the insurer actually receives the time-limited demand through certified mail.

(3) (a) A time-limited demand made pursuant to this section must be accompanied and supported by the following:

(i) all available and supporting documents, records, and information sufficient to allow the insurer a fair and reasonable opportunity to investigate and evaluate the nature and extent of the alleged responsible party's liability and the nature and extent of the claimant's injuries, damages, and losses;

(ii) medical records, invoices, and billing statements from all health care providers, if any, who provided treatment to or evaluated the claimant or decedent for:

(A) injuries suffered in connection with the claim from the date of injury until the date of the time-limited demand, including but not limited to emotional distress; and

(B) injuries, damages, losses, ailments, diseases, or other medical conditions occurring or existing prior to the date of injury that relate or may relate in any manner to any of the claimant's claims that are the subject of the written time-limited demand.

(b) If the claimant asserts a claim for loss of wages, earnings, compensation, or profits, however denominated, the claimant shall provide records from employers or other relevant sources or tax records to document the claimed loss.

(4) On receipt of a time-limited demand, the insurer has the right to provide a proposed settlement agreement or release, or both, or seek

clarification or additional information regarding terms, liens, subrogation claims, alleged damages, standing to release claims, medical bills, medical records, preexisting medical conditions, and other relevant facts. The claimant has the duty to provide any missing or needed documents, records, and information reasonably requested by the insurer. A request for clarification or for additional documents, records, or information, or to propose a settlement agreement or release, or both, may not be deemed a counteroffer or rejection of the time-limited demand to settle. On a request or proposal, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the date of the request to the date of receipt of the information responding to the requestor, whether the terms of a settlement agreement, a release, or both, are accepted or rejected.

(5) If, during the time period within which a time-limited demand may be accepted, it is determined that a lien attaches to any settlement payment to be paid by the allegedly responsible party's insurer, including but not limited to any actual or potential medicare or medicaid lien, the claimant has a duty to cooperate with the insurer to ensure satisfaction of any valid lien interest medicare, medicaid, or other lienholder may have in the settlement payment. In addition, any time limit imposed within the time-limited demand must be stayed from date the valid lien is identified until the date on which the claimant, allegedly responsible party, and the insurer agree to address and resolve satisfaction of the valid lien.

(6) If an insurer with the right to settle on behalf of an insured receives a time-limited demand, the insurer may accept the time-limited demand by providing written acceptance of the material terms outlined in subsection (1) that is delivered or postmarked to the claimant within the time period set in the time-limited demand. The person or entity providing payment to satisfy the material terms may elect to provide payment by any one or more of the following means:

(a) cash;

(b) money order;

(c) wire transfer;

(d) a cashier's check issued by a bank or other financial institution;

(e) a draft or bank check issued by an insurer; or

(f) electronic funds transfer or other method of electronic payment.

(7) In any civil action commenced by or on behalf of a claimant, or by a claimant as an assignee of the allegedly responsible party, or by the allegedly responsible party for the benefit of the claimant:

(a) a time-limited demand that does not strictly comply with the terms of this section may not be considered as a reasonable opportunity to settle for the insurer and may not be admissible in any civil action alleging extracontractual damages against the allegedly responsible party's liability insurer; and

(b) an insurer is not liable for any extracontractual damages arising from or related to any injuries, damages, or losses suffered by a claimant that are not identified in the time-limited demand and supported by the documents, records, and information set forth in subsection (3).

(8) If an insurer receives a time-limited demand from a claimant that the insurer knows or reasonably believes is not represented by an attorney, and the insurer determines that the time-limited demand does not strictly comply with the requirements set forth in subsections (1) and (3), the insurer is obligated to notify the claimant of the requirements within 10 business days of receiving the time-limited demand from the claimant. On delivery of the notice to the claimant, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the

date on which the claimant presents a time-limited demand to the insurer that strictly complies with the requirements in subsections (4) and (5). If an insurer becomes obligated under this section to notify a claimant and fails to deliver the notice to the claimant, subsection (7) may not apply in any civil action alleging extracontractual damages against the insurer.

(9) For purposes of this section, the following definitions apply:

(a) "Allegedly responsible party" means any person or entity:

(i) claimed or alleged to have caused or contributed to cause property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty; or

(ii) claimed or alleged to have committed, engaged in, or be liable for professional negligence or breach of fiduciary duty.

(b) "Claimant" means:

(i) any injured party delivering a time-limited demand to an insurer, including but not necessarily limited to the injured party's attorney or any other authorized representative acting for or on behalf of the injured party;

(ii) any insured under an insurance policy pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer and delivering a time-limited demand to the insurer, including but not necessarily limited to the insured's attorney or any other authorized representative acting for or on behalf of the insured; or

(iii) any assignee of an injured party or insured delivering a time-limited demand to the insurer, including but not necessarily limited to the assignee's attorney or any other authorized representative acting for or on behalf of the assignee.

(c) "Extracontractual damages" means any amount of damages caused by the allegedly responsible party that exceeds the total available policy limit of liability for all policies of liability insurance that an insurer has issued to an allegedly responsible party and which policies of liability insurance are applicable to a claim for property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty.

(d) "Insurer" means any insurer referred to or defined under 33-1-201 who has issued an insurance contract to an allegedly responsible party.

(e) "Time-limited demand" means any offer to settle any claim for personal injury, property damage, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty, in which the offer to settle:

(i) is made by or on behalf of a claimant or is made based on or arising out of any rights of a claimant;

(ii) is delivered in writing to an allegedly responsible party's insurer for purposes of offering to settle a claim against the allegedly responsible party within any insurance policy limit of liability; and

(iii) states by its terms that it can only be accepted within a specified period of time.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Approved May 2, 2023

# CHAPTER NO. 353

[SB 237]

AN ACT REVISING LAWS RELATED TO WATER QUALITY; REQUIRING THAT DEVELOPMENT PLANS BE APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY BEFORE ADDITIONAL CONNECTIONS TO PUBLIC WATER AND WASTEWATER SYSTEMS MAY BE AUTHORIZED; REQUIRING THE APPROVAL OF A DEVELOPMENT PLAN BEFORE THE APPROVAL OF CERTAIN SUBDIVISIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS AND REVISING A DEFINITION; AMENDING SECTIONS 75-6-104, 75-6-108, 76-3-507, AND 76-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Development plans -- department requirements -- rulemaking.** (1) Unless authorized by a development plan approved by the department of environmental quality under this section, a public water or wastewater supply system may not certify or authorize additional connections to its water or wastewater system that would exceed its approved rated capacity.

(2) The department shall approve a municipal development plan to allow additional connections to a public water or wastewater supply system if the municipality demonstrates that:

(a) the additional connections will not exceed the approved rated capacity of the system;

(b) the additional connections will not create a risk to public health or the environment; and

(c) the plan will not cause a violation of any provision of or rule adopted under this part or Title 75, chapter 5 or 6, or any condition or requirement of an approval or order issued pursuant to this part or Title 75, chapter 5 or 6; and

(d) the additional connections will not cause the municipality to exceed the flow rate, volume, or place of use of its water right as defined under 85-2-102.

(3) A municipality with a development plan approved under this section shall submit an annual report detailing its compliance with the approved plan to the department.

(4) A development plan approved under this section may be used by the department to approve connections that would exceed the system's approved rated capacity only if the connection would serve a subdivision subject to review under Title 76, chapter 3, and the governing body has required department certification before final plat approval in accordance with 76-3-507(5).

(5) The department may revoke or require modification of an approved development plan if:

(a) the conditions of development have fundamentally changed;

(b) the municipality has violated the requirements of this section or a condition of an approved development plan; or

(c) the department otherwise determines that the conditions of subsection (2) have not been or will not be satisfied.

(6) A municipality that violates this section or a condition of an approved development plan is subject to penalties under 75-6-114.

(7) The department may adopt rules to implement this section.

(8) Nothing in this section requires a municipality to submit a development plan for review unless the municipality intends to approve connections beyond the municipal system's rated capacity.

(9) As used in this section, the following definitions apply:

(a) "Development plan" means a planning document that outlines the current rated capacity of a water or wastewater system and the system's proposed capacity after upgrades, marked by milestones of construction activity as a percentage of existing capacity, are made to the system and includes a timeline for when the design, bidding, and construction of upgrades to an existing system will be completed.

(b) "Rated capacity" means the gross capacity of a water or wastewater system as required by the design standards provided for in Title 75, chapter 6, wastewater discharge permit limits set in Title 75, chapter 5, and water right limits required in Title 85.

**Section 2. Development plans -- exceptions.** (1) A reviewing authority may not approve a subdivision under this chapter that is subject to a development plan approved under [section 1] unless the subdivision is subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

(2) A certifying authority may not certify that a division under 76-4-125(1)(d) will be served by adequate municipal facilities pursuant to a development plan approved under [section 1] unless the division is subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

**Section 3.** Section 75-6-104, MCA, is amended to read:

"**75-6-104. Duties of department.** (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;

(k) (i) allowable uses of reclaimed wastewater and classification of those uses;

(ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;

(iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and

(iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and

(l) any other requirement necessary for the protection of public health as described in this part.

(3) Department rules must provide for the following:

(a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria*; and*

*(e) department approval of development plans for a municipal system that allows additional connections above the approved rated capacity of a water or wastewater system pursuant to [section 1].*

(4) The department or the board may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(a) ~~upon~~ *on* its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply

system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the department are being obeyed;

(i) enforce and administer the provisions of this part;

(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(k) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys;

(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part; and

(m) review in the form of a written response within 60 days to an applicant seeking approval for use of reclaimed wastewater for snowmaking subject to subsection (2)(k) that:

(i) approves, approves with conditions, or denies the application pursuant to the provisions of this part; and

(ii) (A) describes additional information that must be submitted prior to department approval under subsection (5)(m)(i); or

(B) describes any additional requirements that the applicant must satisfy prior to department approval under subsection (5)(m)(i), such as a permit to discharge under Title 75, chapter 5, part 4, or an authorization under Title 85 from the department of natural resources and conservation."

**Section 4.** Section 75-6-108, MCA, is amended to read:

"**75-6-108. Department to prescribe fees -- opportunity for appeal.** (1) The department shall by rule prescribe fees to be assessed annually on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than $2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than $2 for each service connection to the public water supply system, although the minimum fee for any system is $100, except that the fee for a transient noncommunity water system is $50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The department shall by rule prescribe fees assessed on persons who submit plans and specifications *or development plans* for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department ~~upon~~ *on* receipt of the notice provided for in subsection (5)(a)."

**Section 5.** Section 76-3-507, MCA, is amended to read:

"**76-3-507. Provision for security requirements to ensure construction of public improvements.** (1) Except as provided in subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

*(5) If capacity for the subdivision was approved under a development plan as provided for in [section 1], the governing body shall require the subdivider to complete the water and sewer improvements within and to the proposed subdivision prior to the approval of the final plat. The subdivider shall provide a letter from the department that states that certification and as-builts for the*

*subdivision have been received and that the municipality is in compliance with the applicable development plan.*"

**Section 6.** Section 76-4-102, MCA, is amended to read:

"**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.

(2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6*, including development plans approved by the department pursuant to [section 1].*

(3) "Board" means the board of environmental review.

(4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).

(5) "Department" means the department of environmental quality.

(6) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(7) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(9) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

(10) "Mixing zone" has the meaning provided in 75-5-103.

(11) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.

(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

(12) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(13) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

(14) "Public water supply system" has the meaning provided in 75-6-102.

(15) "Regional authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

(16) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(17) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(18) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(19) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or

sewage or solid waste disposal, facilities until the department has approved plans for those facilities.

(20) "Sewage" has the meaning provided in 75-5-103.

(21) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(22) "Solid waste" has the meaning provided in 75-10-103.

(23) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.

(24) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(25) "Well isolation zone" means the area within a 100-foot radius of a water well."

**Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 6, and the provisions of Title 75, chapter 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 4, and the provisions of Title 76, chapter 4, apply to [section 2].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 2023

# CHAPTER NO. 354

[SB 240]

AN ACT EXEMPTING CERTAIN SUBDIVISIONS FROM ENVIRONMENTAL REVIEW; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Exemption from environmental review -- rulemaking.** (1) Except as provided in subsection (2), the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when reviewing applications under this part for subdivisions that:

(a) are located 2 or more miles from high-quality waters, as defined in 75-5-103;

(b) include 14 or fewer single-family residential subdivision lots;

(c) include wastewater systems that meet nonsignificance criteria established in rule; and

(d) demonstrate full compliance with the acquisition of necessary water rights and water availability.

(2) The exemption provided for in subsection (1) does not apply to subdivision applications that expand or are adjacent to projects exempted from the provisions of Title 75, chapter 1, parts 1 and 2, after [the effective date of this act].

(3) The department shall adopt rules to implement this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 2023

# CHAPTER NO. 355

[SB 244]

AN ACT REVISING LAWS RELATED TO MORTUARY SCIENCE LICENSING; REVISING INTERNSHIP REQUIREMENTS TO OBTAIN A LICENSE REQUIRED FOR THE PRACTICE OF MORTUARY SCIENCE; AMENDING SECTIONS 37-19-302 AND 37-19-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-19-302, MCA, is amended to read:

"**37-19-302. License required for practice of mortuary science -- qualifications of applicants.** (1) The practice of mortuary science is limited to:

(a) licensed morticians;

(b) licensed interns; and

(c) students exempted under 37-19-308.

(2) A person 18 years of age or older wishing to practice mortuary science in this state ~~must~~ *shall* apply to the board on the form and in the manner prescribed by the board.

(3) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) have graduated from an accredited college or university with an associate degree in mortuary science;

(c) pass an examination prescribed by the board and pay the application fee set by the board by rule; and

(d) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary. ~~after passing the examination provided for in subsection (3)(c).~~

(4) A person who fails the examination required in subsection (3)(c) may retake the examination under conditions prescribed by rule of the board."

**Section 2.** Section 37-19-304, MCA, is amended to read:

"**37-19-304. Issuance of intern's license -- license fee -- issuance of mortician's license on completion of internship.** An applicant *currently enrolled in or having already graduated from a program qualifying under 37-19-302(3)(b)* ~~who passes the examination provided for in 37-19-302~~ shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana ~~and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license~~."

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective July 1, 2023.

Approved May 2, 2023