



AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 64TH LEGISLATURE AND PREVIOUS LEGISLATURES; AND AMENDING SECTIONS 2-15-3110, 2-17-546, 7-31-202, 7-32-303, 7-33-4107, 10-1-1402, 13-13-212, 13-21-212, 13-35-502, 15-30-2604, 15-31-150, 19-20-408, 19-20-410, 20-1-213, 33-22-703, 37-47-101, 39-71-703, 39-71-1101, 41-2-103, 45-7-309, 45-9-203, 46-18-201, 46-18-245, 46-18-256, 46-23-1027, 50-2-109, 53-4-209, 61-10-121, 69-13-302, 72-5-446, 72-38-111, 72-38-132, 72-38-301, 72-38-802, 75-1-102, 77-1-103, 77-1-218, 82-2-203, AND 87-2-525, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf conservation and management plan and the Montana grizzly bear management plans plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(4) The board is allocated to the department of livestock for administrative purposes only as provided

in 2-15-121.

(5) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

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

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

Section 3. Section 7-31-202, MCA, is amended to read:

"7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (5) must be of good moral character, as determined by a thorough background investigation;
- (6) must be a high school graduate or have ~~passed the general educational development test and have been issued an a high school~~ equivalency certificate diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and
- (7) must meet any additional qualifications established by the council."

Section 4. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace

officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have ~~passed the general educational development test and been issued an~~ a high school equivalency certificate diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;
- (h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and
- (i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the

initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace officer's course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully completing a basic equivalency course administered by the Montana law enforcement academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency course, the peace officer shall complete the appropriate basic equivalency course within 120 days of the date of the failure of the equivalency course.

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the

educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

Section 5. Section 7-33-4107, MCA, is amended to read:

"7-33-4107. Qualifications of firefighters. The state of Montana determines that qualifications for the firefighting profession must recognize the rigorous physical demands placed on firefighters and the expectation of many years of emergency service. To qualify as a firefighter, an applicant:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be a high school graduate or have ~~passed the general educational development test and have been issued an a high school~~ equivalency certificate diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (4) must possess or be eligible for a valid Montana driver's license;
- (5) shall pass a physical examination by a qualified physician, physician assistant, or advanced practice registered nurse, who is not the applicant's personal physician, physician assistant, or advanced practice registered nurse, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter;
- (6) must be fingerprinted and a search must be made of the local, state, and national fingerprint files to disclose any criminal record; and
- (7) may not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary."

Section 6. Section 10-1-1402, MCA, is amended to read:

"10-1-1402. Legislative intent. It is the intent of the legislature that:

- (1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;
- (2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;
- (3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;
- (4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;
- (5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for ~~general educational development~~ a high school equivalency diploma, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and
- (6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth."

Section 7. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot -- special provisions -- biennial absentee ballot list.

- (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 ~~an absent uniformed services elector [a uniformed-service voter]~~ a uniformed-service voter may apply for an absentee ballot for that election on behalf of the ~~uniformed services elector [uniformed-service voter]~~ 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) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote 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.

(b) The election administrator shall biennially mail a forwardable address confirmation form to each elector who has requested an absentee ballot for subsequent elections. 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 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. 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. If the form is not completed and returned, the election administrator shall remove the elector from the biennial absentee ballot list.

(c) An elector may request to be removed from the biennial 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 biennial absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(4) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (3)."

Section 8. Section 13-21-212, MCA, is amended to read:

"**13-21-212. Mailing ballots to ~~United States elector [covered voter]~~ covered voter.** Ballots mailed to a ~~United States elector [covered voter]~~ covered voter must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the ~~elector [covered voter]~~ covered voter and the signature envelope for the ballot must have printed across ~~its~~ the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency."

Section 9. Section 13-35-502, MCA, is amended to read:

"**13-35-502. Findings.** The people of the state of Montana find that:

(1) since 1912, through passage of the Corrupt Practices Act by initiative, Montana has prohibited corporate contributions to and expenditures on candidate elections;

(2) in 1996, by passage of Initiative No. 125, Montana prohibited corporations from using corporate funds to make contributions to or expenditures on ballot issue campaigns;

(3) Montana's 1996 prohibition on corporate contributions to ballot issue campaigns was invalidated by *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (2000). Montana's 1912 prohibition on corporate contributions to and expenditures on candidate elections is also being challenged under the holding of *Citizens United v. FEC*, 558 U.S. _____, 558 U.S. 310, 130 S.Ct. 876 (2010). This decision equated the political speech rights of corporations with those of human beings.

(4) in 2011 the Montana Supreme Court, in its decision, *Western Tradition Partnership, Inc. v. Attorney General*, 2011 MT 328, upheld Montana's 1912 prohibition on corporate contributions to and expenditures on candidate campaigns, stating in its opinion as follows:

(a) examples of well-financed corruption involving corporate money abound in Montana;

(b) the corporate power that can be exerted with unlimited corporate political spending is still a vital interest to the people of Montana;

(c) corporate independent spending on Montana ballot issues has far exceeded spending from other sources;

(d) unlimited corporate money into candidate elections would irrevocably change the dynamic of local Montana political office races;

(e) with the infusion of unlimited corporate money in support of or opposition to a targeted candidate, the average citizen candidate in Montana would be unable to compete against the corporate-sponsored candidate, and Montana citizens, who for over 100 years have made their modest election contributions meaningfully count, would be effectively shut out of the process; and

(f) clearly the impact of unlimited corporate donations creates a dominating impact on the Montana political process and inevitably minimizes the impact of individual Montana citizens."

Section 10. Section 15-30-2604, MCA, is amended to read:

"15-30-2604. Time for filing -- extensions of time. (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the internal revenue service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(3) (a) Subject to subsections (3)(b) and (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(ii) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection ~~(3)(b)(ii)~~ (3)(b)(i) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) Except as provided in subsection (3)(c), the extension of time for filing a return is not an extension of time for the payment of taxes."

Section 11. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

- (i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;
- (ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;
- (iii) special rules in 26 U.S.C. 41(g) do not apply; and
- (iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax

year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, except as provided in subsection (6)(e)(ii) of this section, and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) Notwithstanding the exception to the definition of wages in ~~39-51-201(24)(b)(v)~~ 39-51-201(25)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that

the regulations need to be modified to conform to this section."

Section 12. Section 19-20-408, MCA, is amended to read:

"19-20-408. Creditable service for employment in private schools. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed ~~for or~~ on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

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

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

Section 13. Section 19-20-410, MCA, is amended to read:

"19-20-410. Creditable service for extension service employment. (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service; or

(ii) if a written application to purchase service is signed ~~on or~~ on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 14. Section 20-1-213, MCA, is amended to read:

"20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and

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

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

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

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

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

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

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

(8) (a) By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and

(8)(c) containing the name, last-known address, and dates of attendance of a student who:

- (i) is at least 16 years of age but less than 19 years of age;
- (ii) was enrolled but is no longer enrolled in a school in the district;
- (iii) has not provided school transfer or graduation information to a school in the district; and
- (iv) has not received a high school diploma or ~~general educational development certificate~~ a high school equivalency diploma.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18 years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

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

- (i) is receiving medical care or treatment that prohibits school attendance;
- (ii) is enrolled in a foreign exchange program;
- (iii) is enrolled in an early admissions college program;
- (iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or
- (v) is excused from school for a reason determined acceptable by the local educational agency.

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

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

Section 15. Section 33-22-703, MCA, is amended to read:

"33-22-703. Coverage for mental illness, alcoholism, and drug addiction. A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents

covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the ~~American association for partial hospitalization~~ association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000; and

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the ~~American association for partial hospitalization~~ association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c); and

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than

\$2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001."

Section 16. Section 37-47-101, MCA, is amended to read:

"37-47-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Board" means the board of outfitters provided for in 2-15-1773.

(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) "Consideration" means something of value given or done in exchange for something of value given or done by another.

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

(6) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) "License year" means the period indicated on the face of the license for which the license is valid.

(8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(9) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter's assistant in accompanying that person.

(10) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide, but the person may not represent to the public that the person is an

outfitter; or guide, ~~[or professional guide]~~.

(11) "Participant" means a person using the services offered by a licensed outfitter. (Terminates August 31, 2015--sec. 11, Ch. 241, L. 2013.)

37-47-101. (Effective September 1, 2015) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Board" means the board of outfitters provided for in 2-15-1773.

(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) "Consideration" means something of value given or done in exchange for something of value given or done by another.

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

(6) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) "License year" means the period indicated on the face of the license for which the license is valid.

(8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(9) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide in accompanying that person.

(10) "Participant" means a person using the services offered by a licensed outfitter."

Section 17. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; and

(iii) is more than zero.

(2) When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable injury or occupational disease, the worker is eligible to receive payment for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 400 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the whole person impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate high school equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn

after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(5).

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 18. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of health care provider by worker -- insurer designation or approval of treating physician or referral to managed care or preferred provider organization -- payment terms --

definition. (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

(b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;

(c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and

(d) shall conduct or arrange for timely impairment ratings.

(3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.

(4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.

(5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.

(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

(7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the

department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to the medical service on the date on which the medical service was provided.

(8) The insurer may direct the worker to a managed care organization or a preferred provider organization for designation of the treating physician.

(9) After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer.

(10) After the date that a worker ~~[whose injury is]~~ subject to the provisions of subsection (9) receives individual written notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a health care provider who is not a member of a managed care organization or a preferred provider organization.

(11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date of injury or occupational disease."

Section 19. Section 41-2-103, MCA, is amended to read:

"41-2-103. Definitions. As used in this part, the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act, 12 U.S.C. 1141j(g);

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

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

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or ~~has received a passing score on the general educational development examination~~ a high school equivalency diploma; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed."

Section 20. Section 45-7-309, MCA, is amended to read:

"45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when the person knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding;

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15; or

(g) purposely failing to comply with the requirements of the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, if ordered by a court to participate in the program.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 21. Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license. (1) If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to ~~50-45-307~~ 50-46-307 or 50-46-308 is convicted of an offense under this chapter, the court shall:

(a) at the time of sentencing, require the person to surrender the registry identification card; and

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under 50-46-330."

Section 22. Section 46-18-201, MCA, is amended to read:

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

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

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

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

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

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

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

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

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

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-310, 45-5-311, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) 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; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(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 upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

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

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

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

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

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

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

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

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

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

(o) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol

or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(p) 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;

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

(r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).

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

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

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

Section 23. Section 46-18-245, MCA, is amended to read:

"46-18-245. Supervision of payment. For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a restitution officer or other designated person to supervise the making of restitution and to report to the court any default in

payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the office of victims services, ~~as defined in 53-9-103~~ provided for in 2-15-2016, to supervise the making of restitution and to report to the court any default in payment."

Section 24. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing -- test procedure. (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control and prevention, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

- (a) the convicted person; and
- (b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-1502, finding a youth to be a delinquent youth or a youth in need of intervention.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 25. Section 46-23-1027, MCA, is amended to read:

"46-23-1027. Parole achievement credit. (1) The department shall acknowledge achievements by a

parolee who, by completion of an activity described in subsection (2), has shown a willingness to reenter society as a productive and responsible member.

- (2) The department shall acknowledge achievements, such as:
- (a) obtaining a high school diploma or ~~general equivalency diploma~~ a high school equivalency diploma;
 - (b) obtaining a degree from an accredited postsecondary educational institution;
 - (c) completion of an approved apprenticeship program;
 - (d) completion of an accredited vocational certification program;
 - (e) employment of at least 20 scheduled hours a week, for 6 or more months;
 - (f) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or
 - (g) any other achievement designated by a department rule."

Section 26. Section 50-2-109, MCA, is amended to read:

"50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, ~~part 23~~ part 40."

Section 27. 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 ~~general equivalency degree~~ 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, ~~GED~~ 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."

Section 28. Section 61-10-121, MCA, is amended to read:

"61-10-121. Permits for excess size and weight -- exempt from environmental review -- agents.

(1) (a) Upon application and with good cause shown, the department of transportation, or its agent under subsection ~~(3)~~ (4), and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. This permit must

be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery ~~oversize permits~~. The permits may be transferred from unit to unit by the dealer; for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

(3) Issuance of a permit pursuant to this section is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when existing roads through existing rights-of-way are used.

(4) The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section."

Section 29. Section 69-13-302, MCA, is amended to read:

"69-13-302. Connection and interchange facilities. (1) Each common carrier shall exchange crude petroleum tonnage, coal tonnage, petroleum or coal products tonnage, or carbon dioxide volume with each similar common carrier. The commission may require connections and facilities for the interchange of the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity for the connections and facilities exists, subject to rates and regulations that may be made by the commission. Any common carrier under similar rules must be required to install and maintain facilities for the receipt and delivery at all points on the pipeline of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide.

(2) A carrier may not be required to receive or transport any crude petroleum, coal, or the products of crude petroleum or coal or any carbon dioxide from a plant or facility that produces or captures carbon dioxide except as may be marketable under rules prescribed by the commission. The commission shall make rules for the ascertainment of the amount of water and other foreign matter in crude ~~oil~~ petroleum, coal, or the products of crude petroleum or coal or in carbon dioxide from a plant or facility that produces or captures carbon dioxide tendered for transportation, for deduction for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The particular powers delegated to the commission in this section may not be construed to limit the general powers conferred by this chapter."

Section 30. Section 72-5-446, MCA, is amended to read:

"72-5-446. Consent or lack of capacity of protected person -- adequate provision for protected person and dependents. The court may make an order authorizing or requiring the proposed action under ~~72-38-444~~ 72-5-444 through ~~72-38-450~~ 72-5-450 only if the court determines all of the following:

- (1) the protected person either:
 - (a) is not opposed to the proposed action; or
 - (b) if opposed to the proposed action, lacks legal capacity for the proposed action; and
- (2) either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the protected person and for the support of those legally entitled to support, maintenance, and education from the protected person, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the protected person and of those legally entitled to support, maintenance, and education from the protected person."

Section 31. Section 72-38-111, MCA, is amended to read:

"72-38-111. Nonjudicial settlement agreements. (1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) Except as otherwise provided in subsection ~~(4)(c)~~ (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) Except as provided in 72-38-411(1), a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter.

(4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

- (a) the interpretation or construction of the terms of the trust;
- (b) the approval of a trustee's report or accounting;
- (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (e) transfer of a trust's principal place of administration; and
- (f) liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Title 72, chapter 38, part 3, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved."

Section 32. Section 72-38-132, MCA, is amended to read:

"72-38-132. Content of notice. The notice of proposed action or notice of proposed inaction must state that it is given pursuant to this part and must include all of the following:

- (1) the name and mailing address of the trustee;
- (2) the name and telephone number of a person who may be contacted for additional information;
- (3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;
- (4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of 72-38-133 except as provided in 72-38-133(3) and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary's expense;

~~(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction;~~

~~(6)~~(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; and
~~(7)~~(6) the date on or after which the proposed action or inaction is effective."

Section 33. Section 72-38-301, MCA, is amended to read:

"72-38-301. Representation -- basic effect. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation by notifying the trustee or representative before the consent would otherwise have become effective.

(3) Except as otherwise provided in ~~72-38-410~~ 72-38-411 and 72-38-602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under ~~72-38-410(1)~~ 72-38-411(1)."

Section 34. Section 72-38-802, MCA, is amended to read:

"72-38-802. Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in ~~72-38-1013~~ 72-38-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) the transaction was authorized by the terms of the trust;
- (b) the transaction was approved by the court;
- (c) the beneficiary did not commence a judicial proceeding within the time allowed by 72-38-1005;
- (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with 72-38-1009; or
- (e) the transaction involves a contract entered into or claim acquired by the trustee before the person

became or contemplated becoming trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (a) the trustee's spouse;
- (b) the trustee's descendants, siblings, parents, or their spouses;
- (c) an agent or attorney of the trustee; or
- (d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust created for the benefit of the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Title 72, chapter 38, part 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under 72-38-813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a

corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) an advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee."

Section 35. Section 75-1-102, MCA, is amended to read:

"75-1-102. Intent -- purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

(a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and

(b) the public is informed of the anticipated impacts in Montana of potential state actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address

impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies.

(b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to ~~75-1-201(6)(b)~~ 75-1-201(4)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority, beyond authority explicitly provided for in existing statute, to a state agency."

Section 36. Section 77-1-103, MCA, is amended to read:

"77-1-103. Administration of lands. (1) The board shall sell lands under 77-1-102(1) in the same manner as other school lands of the state are sold.

(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed; unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the leasing and sale of the lands under 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under ~~77-1-102(2)~~ 77-1-102(3) must be deposited in accordance with 17-3-1003(5)."

Section 37. Section 77-1-218, MCA, is amended to read:

"77-1-218. Public school land acquisition account. (1) There is a public school land acquisition account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the account may be used only for the purpose of purchasing and managing interests in and appurtenances to real property in accordance with 77-1-219.

(3) After deductions are made pursuant to 77-1-109 and 77-1-613, the net interest and income earned on real property and appurtenances purchased with funds from the account must be distributed to the school facility ~~improvement~~ and technology account provided for in 20-9-516."

Section 38. Section 82-2-203, MCA, is amended to read:

"82-2-203. Proceedings to obtain right-of-way. Whenever the owner desires to work a mine or mining

claim and it is necessary ~~to enable the owner to do so successfully and conveniently~~ that the owner ~~should~~ have a right-of-way for any of the purposes mentioned in ~~85-2-201 and 85-2-202~~ 82-2-201 and 82-2-202 in order to work the mine or mining claim successfully and conveniently and if the right-of-way has not been acquired by agreement between the owner of the mining claim and the owner of the land or claims over, under, across, and upon which the mining claim owner seeks to establish the right-of-way, it is lawful for the mining claim owner to present to the judge of the district court a complaint asking that the right-of-way be ~~awarded~~ granted. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the land to be affected by the right-of-way, with the names of the occupants or owners of the affected land, and may also set forth any tender or offer."

Section 39. Section 87-2-525, MCA, is amended to read:

"87-2-525. Class B-14--nonresident college student big game combination license. (1) A student who is not a resident, as defined in 87-2-102, may purchase a Class B-14 nonresident college student big game combination license for the same price as a Class AAA combination sports license if that student:

(a) is currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or

(b) (i) has a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii) has a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has ~~passed the general educational development test~~ a high school equivalency diploma issued in Montana; and

(iii) is currently enrolled as a full-time student at a postsecondary educational institution in another state.

(2) The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.

(3) Application for a Class B-14 nonresident college student big game combination license may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department."

Section 40. 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 64th legislature and previous legislatures.

- END -

I hereby certify that the within bill,
SB 0065, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2015.

Speaker of the House

Signed this _____ day
of _____, 2015.

SENATE BILL NO. 65
INTRODUCED BY R. DRISCOLL
BY REQUEST OF THE CODE COMMISSIONER

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 64TH LEGISLATURE AND PREVIOUS LEGISLATURES; AND AMENDING SECTIONS 2-15-3110, 2-17-546, 7-31-202, 7-32-303, 7-33-4107, 10-1-1402, 13-13-212, 13-21-212, 13-35-502, 15-30-2604, 15-31-150, 19-20-408, 19-20-410, 20-1-213, 33-22-703, 37-47-101, 39-71-703, 39-71-1101, 41-2-103, 45-7-309, 45-9-203, 46-18-201, 46-18-245, 46-18-256, 46-23-1027, 50-2-109, 53-4-209, 61-10-121, 69-13-302, 72-5-446, 72-38-111, 72-38-132, 72-38-301, 72-38-802, 75-1-102, 77-1-103, 77-1-218, 82-2-203, AND 87-2-525, MCA.