

ON THE FLOOR

**ON
THE
FLOOR**

Tales from the Montana State House

REILLY NEILL

Montana State Representative - House District 62

2014

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"Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen."

WINSTON CHURCHILL

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Introduction to Government

Many say they hear a calling to be a politician. For me, it was timing.

I've always had an idealistic hope for small-town journalism regardless of the dim road ahead for print media. I chose newspaper publishing as my primary career path for decades. Work with newspapers provided me with a living in exchange for hard work and dedication to my community. So, while the newspaper industry was continuing its decline over the past decade, I published a barely break-even but popular newsweekly in Livingston, Montana.

An ideal career for me would have continued in the press industry as an editor or publisher, but this endeavor was gradually becoming volunteer work. I still relished the opportunity to serve my fellow residents but the possibilities for doing so were scarce in the small town where I lived.

The job of State Representative was available. The incumbent was unpopular, a Tea Party member who voted to bring back the gold standard in Montana and start the process of seceding from the Union. The Montana State Legislature offered only scant pay and per diem, but the job would be a jumping-off point from community service to public service.

In January 2012 I put my name on the ballot to run for the Montana State House of Representatives and represent the community I had known and served with the newspaper.

In Montana anyone can file to run for the office of State Representative as long as they are of legal age and are capable of managing a few campaign finance reports. House District races are small, usually involving about 10,000 people. Campaign donations are limited to no more than \$170 a person, so election season is anything but extravagant.

Like many small-population states, Montana has a citizen legislature. Every two years people from all aspects of life leave their day jobs and meet in the capitol city of Helena to work for four months on the laws and budget of the state. 100 members of the State House of Representatives represent a total population of roughly one million

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people. House members serve for two years but only one 90-day legislative session.

The city limits of Livingston, Montana roughly comprise House District 60, a district held fairly evenly by either a Democrat or a Republican, depending on the election year. Livingston is an artsy burg of about 7,000 people who vote mostly down the middle as far as city, state or national politics. The Yellowstone River and the Absaroka Mountains form the backdrop for this iconic old-west railroad town.

Just 45 minutes north of Yellowstone National Park, Livingston and Park County were originally home to the Crow Indians. Not far from town is the site of the first Crow Indian Agency, Fort Parker. The fort burned over a century ago and the American Indians have long since been relocated to a reservation in the eastern part of the state.

The physical legacy of the American Indian in Park County is nearly extinct except for a few historic markers and the existence of the last genetically-pure American bison herd in Yellowstone Park. These days in Park County, wealthy liberals live alongside lifelong conservative ranchers, Yellowstone Park scientists, retired railroad union workers, and world-famous sportsmen.

As a novice politician and independent-leaning Democrat, campaigning among the residents of Livingston was anything but conventional for me. For nearly a year before election day 2012, I worked both on selling the struggling newspaper I had founded and winning an election. As a 38-year-old single mom of a pre-schooler, I knew building a new career in midlife, while balancing the demands of motherhood, would be tough but not impossible. I hoped for the best and plunged ahead.

I campaigned by spending mornings in the coffee houses speaking with moms about their concerns, and afternoons chatting with the happy hour crew at district watering holes, talking about working people's issues. I met now and then with city officials or local organizations for lunch and tried to make myself available to my potential constituency on Saturday mornings at the public library. I also continued to publish the newspaper.

My race against the Tea Party candidate and Republican incumbent Dan Skattum was targeted by dark money groups, fully-funded opposition campaign "helpers" who sent out hate mail against my

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campaign. Donations to these dark money groups is not required to be recorded in any campaign finance reports and many of these organizations have corporate backing. One of these groups, the American Tradition Partnership, launched an attack on my campaign right as my race was winding down, using union logos on attack pieces against me.

As I watched, the Teamsters contacted the local daily press to express outrage at their logos being used without permission. The story was all over the news, but not in the newspaper I published. For the duration of the campaign I printed no campaign advertisements or editorial for myself in the newspaper I operated, and only referenced my run for office once, early in the race.

At heart I was a journalist. Behind the scenes I found out who was behind the smear campaign in the days before the election. I confronted the president of his organization for breaking the law and coordinating with my opponent and candidates in races across the state. The individual denied having done anything illegal. I promised to put a writer on the story after the election and expose him. He responded to me with an email indicating he knew who I was and where my child went to day care. He assured me that he was not scared of me. This was my first foray into the dark world of politics.

On election night November 6, I won the district 2,431 to 2,097 votes.

Within a few months I dissolved my business and sold what I could of the newspaper to pay off debt and provide myself a small stipend. By January of 2013 my 4-year-old son and I were on our way to Helena, Montana, two hours northwest of Livingston.

Founded as a gold camp in 1864, many of the original streets of Helena followed the chaotic paths of the miners, meandering around claims along Last Chance Gulch at the center of the town. My son and I found a furnished rental a few blocks from downtown and the spectacular St. Helena Cathedral. The Capitol building was a quick walk from my house, less than a mile away. I went to work in the chambers every day—usually Monday through Saturday—and my son attended a day care across the street from Capitol Hill.

Topped with an impressive and imposing copper rotunda, the Montana State Capitol stands on a hill overlooking the rest of Helena. In the central interior chamber of the building, four circular paintings

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surround the base of the rotunda dome and flank a massive three-floor marble staircase below. Each painting above the staircase represents an archetype in Montana history: American Indian, explorer and fur trapper, gold miner, and cowboy.

The western arch of barrel vault over the staircase features the semi-elliptical painting "Driving The Golden Spike" of the Transcontinental Railroad by Amédée Joullin. The eastern arch frames a view to the vast high plains south of the city and Canyon Ferry Lake some 20 miles away.

Statues of Montana political icons Jeannette Rankin, in 1916 the first woman elected to the U.S. Congress, and Mike Mansfield, a U.S. Congressman and U.S. Senator, the longest-serving [Senate Majority Leader](#), and later, the U.S. ambassador to Japan, rest in a backdrop of polished wood banisters and stained glass on descending landings. On the lower levels are press and caucus rooms, a post office and a cafeteria, the "Politically Correct Café."

The primary purpose of the capitol building is to house the Governor's office and the Montana State House and Senate members when the legislature is in session. The House and Senate chambers adjoin one another on the third floor, separated by a carpeted and elaborate lobby and a labyrinth of anterooms.

Marble columns brace the gallery of the House chamber, a spacious room filled with 100 wooden desks and chairs arranged in a semicircle on the floor. Most of the seating is draped with sheepskin robes purchased from Montana shepherds. A square-domed and glass-tiled ceiling provides natural light and good acoustics. The iconic Charles M. Russell painting, "Lewis and Clark Meeting Indians at Ross' Hole" hangs above the elevated Speaker's chair in the front of the chamber. The painting is 25 feet long and 12 feet high and depicts the explorers meeting Montana's Salish Indians. The light on the painted scene is both sunrise and sunset.

When in the chamber, members observe a reverence for the deliberate atmosphere of lawmaking. Regardless of the passions behind any argument, decorum in the 2013 session remained civilized and respectful.

Most representatives, Democrats and Republicans, know how they will be voting on any issue well before they walk in the door for the

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daily discussion and voting session. Although citizens are constantly bombarding representatives with emails, phone calls and written messages, the bulk of the votes on the floor seem to be guided by either individual perspectives or by lobbying efforts from a variety of special-interest organizations and corporations.

I only witnessed a collective shift in a House floor vote a few times during the session that seemed to occur solely because of what was said on the floor on any particular day. Still, House members did whatever it took to grandstand and show off for votes and attention. Some members of the House told absolute mistruths to encourage colleagues to vote for their perspective and change the code of law in the state. As shocking as this was to me, I came to understand such insincere pontification to be par for the course in Montana politics.

Although Montana voters favored the House with a Republican majority and Democratic minority in a 61/39 split, a cabal of roughly 18 Republicans actually ended up running the entire show. If a Republican legislator decided to stand against the group on a targeted issue, or even in the middle, they would subtly be threatened with losing their next election.

Making friends on both sides of the aisle was unavoidable for me with 99 colleagues. Most representatives heard the stories. If someone was not going along with the Republican cabal's party line, the threatened legislator would be encouraged to change his or her perspective or suffer the consequences. During session the targeted lawmaker's legislation would die.

Even worse was the threat of what could happen after session. Some dark money organization like the American Tradition Partnership would target the legislator's next primary race and a Tea Party candidate could easily be selected and funded to run against the incumbent.

A few Republicans were brave and stood up to the Tea Party cabal in the House but even those few soon got back in line. Crazy lies prevailed, lies upon lies were told and the powerful influence of certain industries and philosophies made themselves known over the months that passed.

I present in the following chapters an insight into this process of lawmaking in Montana. The majority of the information shared is

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verbatim from the House floor. I encourage readers to draw their own conclusions.

After serving in the State House of Representatives during the 2013 session, many in my district told me they were curious about our state government. Many more asked me for a personal perspective on my recent experience. Writing this reflection was eye-opening.

There is the monotony of sitting through the testimony from countless committee hearings along with nearly 90 straight days of discussion on the House floor regarding subjects as riveting as "requiring agencies to present proposed rules to interim committees" or "coordinating state time limits with federal law on consumer reports." However, within all this tedium, wholeheartedly compelling issues arose and provided opportunity for rigorous debate.

Compromise in the legislative process was rare, thanks to the overwhelming control of the Republican majority in both the House and Senate. Still, stories emerged on the House floor: stories of the state, its people, and the challenges that society faces in trying to live peacefully together.

As an editor and publisher, I wish I could assign the task of recounting the session to a hungry journalist and then polish and print the account. Instead, I am solely charged with this assignment. As time before the next election cycle has been short, just a year where I have had the demands of interim legislative work along with further professional work and my family, this summation of the session is certainly anything but a complete account. I wish that time allowed for the transcription of at least another dozen issues debated on the floor, and that my schedule allowed for the months of continued research on the issues.

Each discussion has been painstakingly transcribed, and omissions or summarizations have been enacted only to preserve clarity. All dialogue presented is verbatim or can be attributed to a reliable source. Conclusions are drawn only on presented material and direct observation. Integrity and reliability are the backbone of my journalistic ethics and in this retelling of the highlights of the session, the search for the truth has been my driving force.

For the most part, the following chapters represent only discussions of bills on the House floor. Senators and Senate bills are discussed but the primary focus is on action in the House.

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State House Representatives, with help from the Legislative Services Division, craft bill drafts which propose to change, modify or remove laws in the state code. These bills are introduced by a Representative sponsor first in a House committee. Committees range from Business and Labor, Agriculture, and Judiciary and bills are assigned to committees with the greatest frame of reference for the particular issue under discussion. Committees are comprised of roughly a dozen representatives and are proportionally weighted in favor of the party in control of the House. In the case of the 2013 session, all House committees had Republican majorities.

After a committee hears discussion on the bill from the sponsor, proponents and opponents of the bill and informational witnesses testify on the bill. Later, the committee considers the bill in executive action and decides to either table or pass the bill. If the bill passes, the legislation moves to the House floor for a discussion by the Committee of the Whole, otherwise known as the Montana House of Representatives.

Discussion on the House floor is quick. Sometimes only a few people get to speak for a few minutes to make their points to fellow members. The Television Montana records and archives every committee meeting and House and Senate floor session and these sessions are available for download and viewing online at leg.mt.gov. Although I took many notes during the 2013 session, I rely on first-hand transcription of discussions on the floor by utilizing this service.

Provided for reference at the close of the book is a brief Index of Lawmakers dealing with those who play significant or recurring roles in the drama of the 2013 session. Each individual who served with me initially commanded my respect and the respect of the chamber. Although true political personalities were eventually revealed through attitudes and legislative discussion, my respect for my fellow lawmakers remains intact and sincere. It's not an easy job and I truly believe everyone does their personal best.

Every transcription of House floor business is interspersed with facts obtained by post-session research. By interviewing and relying upon various sources, I attempted to ferret out and insert sourced facts when a deviation arose in discussion on the floor or further explanation was required. Although legislators are allowed to access the Internet during daily sessions, there is rarely enough time to seek

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documented facts and present them immediately to colleagues. Having the benefit of research and hindsight more clearly displays the facts regardless of the testimony.

Discussions on the floor are moderated each day by a different Chairman or Chairwoman, a Representative from the floor who volunteers for this position. With 90 days in session, nearly every representative gets an opportunity to chair a House session. In each narration this individual is simply referred to as the Chair.

Except for the sponsor of any particular bill, representatives are limited to speaking only once on a subject and may speak for no more than five minutes. Bill sponsors are allowed an additional five minutes to close or conclude their argument.

Included at the end of the book are actual bill drafts written to change the code in Montana law. These bills are also presented as both text and in document format online at leg.mt.gov. Code language is actually not as complicated or overwhelming as one might think, and consulting the entire bill text available should help clarify points for readers.

What follows is only a brief sample of legislative work during my time on the floor of the Montana State House of Representatives. I was honored to serve my community and will be forever thankful for the twist of fate and perfect timing that allowed and encouraged me to do so.

Is democracy alive and well in America? I'm now not so sure. I certainly have tried to have faith in the system and will continue to have faith in the intelligence of the American voter

Chapter 1: Sex on the Floor

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Fear is often the primary emotion fueling prejudice. This fear of the unknown or unfamiliar is sometimes prevalent in Montana, a fairly conservative state. Although there are tales in every community about legendary homosexuals—whether they ran a popular hunting lodge for over 50 years or were a celebrity like rumored bisexual Calamity Jane—in the recent past the majority of Montanans remained fairly intolerant of "deviant" sexual orientations in their small towns and rural districts.

In the past twenty years, social conscience has evolved across the country and people of any sexual orientation are usually accepted in the modern families and communities of Montana without reservation.

Many laws still exist in code to prohibit same-sex coupling in states across the country. Montana has a few of these laws still on the books and one in particular was addressed by Missoula-area Senator Tom Facey in the 2013 session.

In Senate Bill 107 Facey proposed to revise the definition of "deviant sexual conduct." With the revision, having a physical same-sex relationship would no longer be considered a felony offense. The bill passed in the Senate 38 to 11 votes and was relayed to a House committee. At this point, the bill was voted down and tabled in the House Judiciary Committee. It "died in process."

Drafting a bill is an extensive undertaking. The death of a bill in a committee is devastating to lawmakers who have put tremendous time and effort working with individuals from their districts, organizations and even lobbyists to look at the Montana Code of Law and find ways it can be improved or modified for the betterment of society or personal interest.

After what might be a months-long process of changing as little as five words in Montana's code, this work often will be discarded by the majority in a simple partisan committee vote. When this happens, lawmakers have the ultimate option to "blast" the bill on to the House

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floor to be heard by all members in the Committee of the Whole.

Representatives reserve the blast option for the most important issues on their or their political party's agenda. In the 2013 session, fewer than a dozen blast motions were made. They pertained to jobs expansion, access to public lands, mandating coverage for breast cancer screenings, encouraging Medicaid expansion, and revising the deviant sexual conduct code.

The House majority was overwhelmingly Republican so their party legislation usually made it easily through committee hearings. Only Democrats were forced to use the blast option.

When Senate Bill 107 died in the House Judiciary Committee, Representative Bryce Bennett (D-Missoula) blasted the bill from the Judiciary committee to the House floor. A three-fifths majority agreed by a vote of 60-38 that the bill should be heard and it was put on the agenda for discussion the next day.



The atmosphere in the State House is calm but weighted with a nervous tension when Representative Bennett brings the bill to the floor during the 2013 session.

Professional and vigorous in debate, Bryce Bennett is a 29-year-old political dynamo determined to mark accomplishments during each daily session. The young legislator has short ash-blonde hair and bright blue eyes. He wears a dark blue well-cut suit nearly every day and thick black-rimmed glasses when reading notes and presenting a bill. He is a fifth-generation Montanan and the first openly gay man in the Montana State House.

"I just want to provide a couple of key points I think are very critical in remembering what this bill is all about," Bennett says as he stands and glances at a thick stack of notes in his hand.

"This bill removes unconstitutional language from the deviant sexual conduct code, the language that labels gay and lesbian Montanans felons under the law, punishable by fines of up to \$50,000 or up to 10 years in prison," he says, his voice now confident as he addresses the body.

"This section of statute was ruled unconstitutional by the Montana

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Supreme Court in July of 1997." Bennett defends the tenets of the bill on the House floor, explaining that "prosecutors do not need nor do they use the section of law to prosecute actual criminals."

He continues, "There are better, more appropriate, and often stronger laws on the books that they can use to go after people who commit sexual crimes." Bennett turns and looks around the chamber. His desk is situated in the center of the spacious room and he speaks to the legislators behind him on the floor.

"Beyond the legal arguments," Bennett says as he references his notes, "this is more about treating every Montanan with the same respect and dignity. This removes hurtful and demeaning language that compares our friends, our co-workers, our neighbors, and our family with people who rape animals."

Bennett's voice is clear and the chamber is quiet. He explains, "This bill is simply about letting gay, lesbian, bisexual Montanans know that while we may not agree on everything, or many things, that they still deserve better than being called a felon under the law."

"So I'm asking you today for a yes vote to help end a painful chapter in the state for people like me and many others in every community across the state," Bennett pauses with a quick sigh before continuing, "I urge a green light. Thank you." He concludes his opening argument and sits quietly at his desk.

The Chair calls on Representative Doug Kary (R-Billings), a Republican from the eastern side of the state. Kary worked for many years in marketing for the Montana-Dakota Utilities Company but now lists his occupation as "semi-retired." In his mid-60s, he has a friendly but worn face with rounded features and a pinched expression. He is serving his second term in the House.

"I do agree with Representative Bennett for the most part." That being said, Representative Kary requests an amendment to the bill to revise the language yet again.

He explains, "Where it defines what 'deviant sexual' means, I would like it to read 'non-consensual sexual contact or sexual intercourse between two persons of the same sex, an adult and a child of the same sex,' and then it goes back to the original verbiage."

The Chair calls on Bennett to respond and he stands quickly without referencing any notes.

"I oppose this amendment and I'll be really clear about why," he

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says, "This looks innocuous but it's not. It creates two different classes of rape."

He explains further, "It creates an idea where one type of rape is more legitimate or more severe than another. It's the idea that a man breaks into your house and rapes your daughter and rapes your son and for some reason according to this amendment, one is worse than the other." Bennett pauses and looks around the chamber.

Bennett encourages the body to resist the amendment and takes his seat again.

Representative Rob Cook (R-Conrad) stands next when recognized by the Chair. He is an imposing man, tall and broad with thoughtful eyes and a measured demeanor. Cook is a native Montanan, born in Choteau. He represents a small town on the east slope of the Rocky Mountain Front where he worked as a trucking company executive and engineer.

Representative Cook is often in any impromptu Democratic caucuses held during the floor session as he leans far to the center of many of his Republican colleagues.

"I'd like to discuss just the mechanics of transmittal here." Cook refers to the transfer of an amended bill back to the Senate. If the amendment is voted on the bill, he explains, then for the bill to be accepted by the Senate it will take a vote of two-thirds of the full Senate before coming back again to the House floor for discussion.

"This amendment is really a Trojan horse," he says, "We're being asked to improve this bill with an amendment that's not necessary and in fact nothing more than another effort to kill this bill.

"Let's keep this bill on schedule, do the right thing for thousands of Montanans, and vote no on this amendment," Cook says plainly.

Another moderate Republican rises, Representative David "Doc" Moore (R-Missoula), a simple-spoken straight-shooter and a former "doctor" of automobiles serving a district south of Missoula in western Montana.

"Vote no on this amendment and vote yes on this bill. Common sense says it's the right thing to do," he says quickly and sits at his desk.

The Chair calls on Representative Jenny Eck (D-Helena), a young Democrat with a clear focus and intent. Eck is a mother of two school-age children who lives in the capital city with her family, un-

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like many legislators who are separated by hundreds of miles from their families during the session. She has worked in the office of the Montana Attorney General for many years before being elected.

"With all due respect to my colleague from Billings," Eck motions to Representative Kary, "I have to say that as a woman I take issue with this amendment.

"The idea that I should be given less protection from rape under the law simply because of my gender is frankly appalling to me," she says. Although slender and petite, Eck has a steady and strong voice that reverberates in the chamber.

"There is no such thing as good rape and bad rape and normal rape and abnormal rape," she adds, "I'm sure you agree with me that all rape is bad. I'm sure you agree that all rape is abnormal and abhorrent. Rape is rape. It is a horrendous crime under any circumstances to be prosecuted to the full extent of the law regardless of the gender of the victim."

"Please join me in voting no on this amendment," Eck says before sitting at her desk. The Chair calls for Representative Kary to close his argument for the amendment.

Kary begins, "I don't believe the title allows us to go back and change the difference between heterosexual rape and non-heterosexual rape. This is part of the reason this amendment is brought forward."

He continues in a confusing vein. "Also, you have my word that if this amendment passes and that the Senate does not waive their rules, I will make sure—I will bring this bill back for reconsideration and when it does that, it will be stripped of the amendment and the body can deal with it."

Kary concludes with this convoluted explanation of the possible future of the bill and then asks his colleagues to give him a green light. The green "yea" button on a representative's desk indicates a yes vote on the floor. The red "nay" button indicates no on a vote. Representatives often urge fellow members to vote red or green indicating these buttons which count individual votes.

The vote is held in the chamber and the amendment fails. The Chair leads the discussion back to the bill to remove same-sex intercourse from Montana's code of felony deviant sexual conduct.

Jerry O'Neil (R- Kalispell) is next to speak. Representative O'Neil

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is a Republican with a far-right independent streak. Although he resembles a typical non-threatening farmer's market vendor—down to the socks and sandals he wears throughout the winter months—O'Neil is actually an impassioned zealot from the woods of northwestern Montana. He has an original style of lawmaking in the House, having requested that his legislative salary be paid in silver and gold, sponsoring bills to allow criminals to choose corporal punishment over jail time, and clearing the way for individuals to practice law without a license or degree.

O'Neil often speaks on the floor when contentious social issues are in discussion, professing intimate knowledge of the subject matter. He is the first to weigh in on the debate over deviant sexual behavior in Montana code.

"I've got friends that are homosexual and I've got relatives that are homosexual," he says. "I've visited with them. I like them."

O'Neil stutters and slurs some of his words. He sputters, "I accept them, I do not accept the lifestyle. The thing I have against this bill is that it makes it—there's no way, as far as I can see, for us to stop our schools, our grade schools, maybe middle schools, from teaching the homosexual lifestyle as an acceptable lifestyle to our children."

In what curriculum the felony offense code for deviant sexual behavior would be taught to grade school students is unclear from O'Neil's explanation.

"My homosexual relatives and friends, they've—as far as the one's I've talked to—do not believe this is the lifestyle they want to encourage other people to accept," O'Neil continues. There are muffled sounds from the floor.

"They, for themselves," he stutters, "They, they accept it for themselves but I don't think they want, as far as I know, they do not encourage it for the rest of the population. If we pass this bill and make it a legal process, a legal whatever, then, if we, if some second grade teacher wants to take her lover to school, to the class and introduce the lover to the kids, there's nothing, I don't think there's anything the school board can do to stop that."

If the bill passes, he explains, the second-grade lesbian teacher he mentions "has as much right to introduce her lover as another teacher has to introduce her husband. Because they're both legal, they're both accepted, they're both whatever." O'Neil indicates this is the primary

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reason he will be voting against the bill.

He concludes his argument and sits. The discussion on the floor continues when the Chair calls on Representative Christy Clark (R-Choteau).

From the rural district of Choteau on the front range of the Rocky Mountains, Representative Clark is known for a reasonable and measured approach to a variety of issues across the board. She is a middle-aged mother of three children and exudes an attractive personality, a genial spirit and a trademark Montana gutsiness.

"I rise in support of this bill," she says.

"The GOP thoughtfully and unanimously removed this language from our party platform last convention, deciding that we were a party of smaller businesses—or of greater business, more privatization, and less government," she says.

"We felt this was consistent with our values," Clark emphasizes. "To leave a law on the books that is obsolete and has been found unconstitutional just doesn't work. I respectfully ask you to join me today in supporting this bill," she says in conclusion.

The Chair calls on Representative Wendy Warburton (R-Havre). Warburton is frequently absent due to overwhelming family medical issues. Her fiancé battled life-threatening illness during the few months of session. Still, she calls in absentee votes, coordinates with fellow legislators to craft and sponsor legislation and attempts her best to complete work on the floor. She is a young woman with a sharp gaze who works as a newspaper advertising executive for a rural "shopper" or classifieds newspaper in her district near Havre, Montana.

Warburton is an admitted Tea Party member. Many in the Montana Tea Party disagree with the GOP party platform on social issues such as gay sex.

Warburton clarifies, "I need to clear up some confusion here for my side of the aisle. The GOP did not thoughtfully remove this from our platform. It was presented at the platform convention that this was a line being deleted because it addressed one man, one woman marriage and was covered elsewhere in the platform so it was duplicative."

She speaks with conviction, "That's how it was sold to the general audience that voted on it. It was my understanding being at the con-

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vention.

"My other point is what we saw in committee," she continues plaintively, "Senator [Verdell] Jackson brought an example of material that was being taught to kids in school in the area all about 'Bobby's Two Daddies' or something like that and if we pass this bill we are saying this is perfectly fine, perfectly acceptable behavior, there's no reason not to teach it in school.

"I think that here in Helena there's been a major problem with this," she says, "I heard that 700 parents came and spoke to their school board against that and they were ignored and the school board went ahead with it. So we will just see more of this in our state if we pass this.

"Vote no" she says emphatically and sits again at her desk.

Across the chamber, Representative Steve Gibson (R-Helena) rises after being recognized by the Chair. He is a dark-skinned older man with jet-black hair and an eternally non-plussed expression. He is a former Juvenile Corrections Officer who represents East Helena. He has a deep voice with a slight smoker's rasp.

"I wasn't going to get up," he says, "I just was going to respectfully disagree with Representative Warburton." Gibson explains that he himself was on the Justice Committee at the state Republican convention where the motion was made to remove this language and he personally witnessed the intent of the committee.

He concludes his argument simply, "It was unanimous and it was exactly about this. Thank you."

Representative Gibson sits and the Chair calls on Representative Dave Hagstrom (R-Billings), a self-proclaimed affordable housing developer" representing a district in Billings.

Hagstrom is also a Tea Party member who is in and out of the media during session. He is a lithe and nondescript balding man of late middle-age with a nervous but self-confident demeanor that relaxes as he addresses the issue on the floor. Hagstrom asks the Chair if he can ask the sponsor of the bill a question. Representative Bryce Bennett agrees.

Hagstrom turns to face Bennett, who stands ten feet or so across the aisle. He turns to face the head of the chamber and says, "I have a lot of love and respect for a whole number of homosexual friends so there's no homophobic issues going on here with me."

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He turns back to Bennett and asks, "My question is, 'What's the purpose of sex?'"

There is a long silence and pause on the House floor. The Chair breaks the silence by asking Bennett if he'd like to respond.

Bennett says yes and stands, responding, "I think that's up to individuals."

Hagstrom says he'd like to ask Bennett more questions and then apparently changes his mind, saying he will just speak to the bill: "I'm going to vote no on this bill, but it's just, it's just for this reason: I don't think that homosexual sex is necessarily not deviant. Deviant isn't a bad word. Deviant simply means it's not normal, it's not typical."

He continues, "I kind of liken it like this. This pen has two purposes." Hagstrom pulls a pen from his breast pocket and holds it up to display it to the body.

"The first purpose of course is to write," he explains, "The second purpose is to retract so it doesn't leave a stain on your shirt or your purse." At this point Hagstrom clicks the pen open and retracts it by pushing on the pen's lever and popping it with his thumb. He holds the pen as a prop while he explains his point.

"It has two purposes," he refers to the pen. "One is primary and the other is secondary."

He explains further, "To me, sex is primarily purposed to produce people. That's why we're all here. Sex that doesn't produce people is deviant. That doesn't mean that it's a problem, it just means that it's not doing its primary purpose."

There is murmuring from the crowd and an indication from Hagstrom's own party that his argument is played out.

The wind out of his sails, he stumbles with his conclusion and makes it brief, saying, "So I, so, I'm just speaking to the bill. So, I encourage people to vote red."

Hagstrom sits and the Chair calls on Representative Nicholas "Nick" Schwaderer (R-Superior).

Tall and youthful, Schwaderer is a freshman legislator, lawyer and Tea Party member from the western part of the state. He has soft, attractive features and an open-minded and affable personality for a neo-conservative Republican. He has a lilting voice and a smooth delivery and he often uses these traits to mock himself in discussions in

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order to engender a connection with his fellow lawmakers.

He stands in the chamber and begins his argument with a practical, no-nonsense Montana drawl.

He says he has his own reasons for supporting the legislation, professing to be a neighbor of the original bill sponsor Senator Tom Facey.

"I've heard a few different issues that this has gone through and I just want to talk to them, to address some things," he says, referencing a number of papers on his desk as he stands.

"First on the mechanics. It's a decent-sized bill but I spoke with Facey, he's from my neck of the woods, when he put it together because it's something that some of us in the GOP were looking for because we worked on it in the convention."

Schwaderer says he's heard people saying there are sneaky things in the bill but he assures the entire body that this is not the case. He then launches into his next point, describing the reactions of his constituents and others to the idea of striking same-sex intercourse from deviant sexual behavior in code.

"They say, 'But Nick, in my eyes, this is what, you know, is deviant, it deviates,'" he says.

"Words do have meaning," he continues, explaining that the definition of deviant is classified for crimes for which "you can take a person away from their home for, put them in a cage for up to ten years and fine them \$50,000" in the state of Montana.

Schwaderer emphasizes his point with a clear voice as he waves a copy of the bill in his hand, "Folks can have their own words in their head of what that means but we're not writing dictionaries, we're just figuring out what's the prudent role of the state to put people in prison."

For his next point Schwaderer explains, "As far as bogeymen and bills, you know, I've been accused for looking for bogeymen a bit. I sign just about every drone [unmanned aircraft] bill I see.

"I'm on the hunt for bogeymen," he adds. Legislators are discussing this bill with their own personal paranoia at play, he says. He succeeds in lightening the somber tone in the chamber by eliciting a few muffled chuckles. An atmosphere of tolerance and reason is present for a moment.

"There's no bogeyman. If there was, I would have found it. Vote

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green," Schwaderer concludes in a flat, practical tone and sits down at his desk.

The Chair recognizes Duane Ankney (R-Colstrip). Representing a district in Montana's coal country, Ankney is a proud caricature of a western lawmaker. He is short and slightly bowlegged with round spectacles and a bald patch usually covered by an oversized cowboy hat. He speaks in a pronounced and unique drawl through a bushy gold and silver mustache that covers his entire mouth.

There is a hush on the floor and a long silence as Ankney prepares to speak.

"I haven't heard a lot of discussion about rights," Ankney says with an edge in his voice, "This is about rights." He knits thick eyebrows on his forehead and glares about at his colleagues.

"These are individuals," he reminds the body. "They have rights!

"I raised five kids," he says, his voice subdued, "Oldest is a daughter and I got four sons, three of them are veterans. And them four sons would give their last breath for my daughter to live her life in the way that she chooses."

Ankney continues, his voice starting to waver.

"To say she is any less of a person," he says, pausing to shake his head, "or she is a criminal for her lifestyle really upsets me. And for anyone who would feel that way upsets me."

He is silent, looking at the members of the body with a fixed stare.

"I consider myself a good Christian," Ankney continues, looking around the room and chastising his colleagues in his baritone voice, "because my belief in God has drug me out of the dregs of drunkenness and all sorts of things. I know the power of prayer and the power of God. And I don't think God thinks any less of my daughter than he does of any one of you in here."

Ankney's voice rises and the chamber is quiet and hushed.

"This bill is an embarrassment! The law is an embarrassment on the good people of Montana. It should go away and it should go away as quietly as it can!" Ankney's voice resounds in the quiet chamber and those seated in the gallery erupt in applause.

"Order!" The Chair calls. The applause subsides and the gallery audience quiets. The decorum in the chamber is returned to a hushed silence.

The Chair calls on Representative Jerry Bennett (R-Libby), who

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runs a port-a-potty and septic tank servicing business in his district. He is a slight-of-build middle-aged man with a sincere smile and an earnest expression.

He appears swept up by the emotion in the chamber when he rises. His face looks nervous as he takes a deep breath and exhales into the microphone.

"I wasn't going to speak on this bill," he says, "And I may not." There is a long pause while Jerry Bennett composes himself, looking at his desk as if reading prepared notes.

"Um, um," Bennett begins, taking a few more deep breaths and sighing while looking to the floor.

"I'll just tell you about my life in Christ," he says in a strained voice, controlling tears and emotions obviously welled up within him.

"You know I take it back to marriage and when I married my wife," his voice is still weak and soft but he continues, "I committed my life to her."

He takes a moment before continuing.

"And I pledged my life to her and I've done the same thing to God," he says, "And I believe that God is no respecter of persons. We can live our life how we want and He loves us. But when we give our life to God, as I have chosen to do, we get up on this floor and we ask for His wisdom and for His blessing and with that, if we're going to ask, comes obedience."

Bennett evolves his discussion to a sermon on his religious perspective. He explains the personal integrity he must follow due to his religion, explaining, "You know there are many things in His word and they're not easy. And we choose either to live by those or not to live by those.

"I appreciate what Representative Bryce Bennett said yesterday," he says, returning to the subject of the bill, "that when he came to the House no one looked down on him or treated him any different—as it should be. We are commanded by God to love one another."

The sermon continues. "First of all, when I chose to love God because He first loved me means that I trust Him and I obey Him and with that, you know, I look to God's word for guidance. And He said that He loved us so much that He sent His son that we might have life."

Bennett starts to break down once again and his voice shakes. He

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takes a long, deep pause before continuing with heavy emotion.

"It is the thief, the Devil who comes to steal our life, to rob us, to kill us," he says, nearly in tears, "But Christ said I come that you might have it to the fullest and that's my desire for everyone here.

"I pray that our lives would not be robbed from us," he says with more composure, "And for that reason I have to vote no on this bill because He says 'therefore be steadfast, immovable,' always knowing that we'll be blessed through that and that our toil is not in vain.

"What we do here is toil," he says slowly in a voice heavy again with emotion, "And it's struggle. And with that I have to vote no by the very foundational principles I live my life by." Representative Jerry Bennett closes and sits again at his desk.

Without a pause the Chair recognizes Representative Jonathan McNiven (R-Huntley).

"Members of the body, we have decisions that we make. We all have them all our life that we make. This life is a life of decisions," he says solemnly with the reverence of a preacher.

He is a Mormon and a Tea Party member from a small town on the Yellowstone River in southeastern Montana. McNiven is a tall and broad younger man with a simple manner.

His voice rises and falls as he speaks to the bill. "Following up on what Representative Jerry Bennett just talked about. Who do we devote our lives to? Who is the one that we follow?

"I, myself, as well as Representative [Jerry] Bennett, I chose to follow my savior, our savior," McNiven continues, "I think there are some principles that we have to think about and what this law is, and sometimes you have these kind of laws that come up in front of you. They're hard ones.

"But that's what we were called to do here," McNiven says. "Right? Keeping our savior as the focal point and what He would have us do.

"Are we perfect? No." McNiven sighs and continues preaching to the assembly. "Do we all have weaknesses? Absolutely we do. Are we all trying to be better people? I would sure hope so. That's what this life is all about."

McNiven takes frequent pauses and draws out his speech with each sentence so that he is fast approaching his five-minute time limit. The Chair does not intervene as McNiven rambles off-subject and

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continues to sermonize in regard to Montana code.

"The way I see it," he says, "I know our heavenly father loves us. He knows that we're imperfect and that's what we're here for, to try to become better, to try to overcome the weaknesses we have so we can become better and hopefully throughout this life figure out where we are going."

McNiven continues, "This is just saying, in my opinion, that we recognize that these are our brothers and sisters and these are the people that we love, these are people that are all around us and in my opinion, that's their trial in life. We all have them. We all have to learn to overcome them.

"I don't support this type of lifestyle," he says, "I can try to see the other side. I can try to see why they think that way. That's part of this process. We try to listen to both sides."

McNiven repeats himself and indicates that he'd like to see more promotion of marriage in general rather than co-habitation, and the promotion of marriage between a man and a woman.

"But that's not what this bill is saying," he clarifies.

"I am going to vote for this bill," he says. "We still love these people. We want to help those people. Every one of us are not perfect but every opportunity I get to help to promote the family as the central unit of society of which we will succeed, having the focus of our savior Jesus Christ, I will do so."

With a final line of praise to his Lord, McNiven closes. The Chair indicates there is no more discussion on the bill. The House has been discussing the subject for nearly half an hour when Representative Bryce Bennett stands to close with a quick argument.

"This bill is not about encouraging a lifestyle," Bennett reiterates. "It's simply about respecting privacy between two adults. Nothing we do in this bill is going to change what's being taught in our schools. This is, as it always will be, left to our local school boards."

Bennett echoes Representative Schwaderer, "There are no bogeymen in this bill.

"This is just saying that all Montanans deserve dignity and respect," Bennett says. "I'm asking you to vote for this bill to end the idea that any of our sons and daughters or brothers and sisters are any less equal or respected than any other.

"I appreciate this discussion," he concludes, urging a green light.

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The Clerk Records the Vote: 64 Aye, 36 Nay. Bill passes. *Law is revised to reflect that sexual intercourse between partners of the same sex is no longer considered deviant behavior and a felony offense.*

Governor Veto: *No veto. The bill becomes law when signed by the governor on April 18, 2013.*

Chapter 2: Shooting a Gun in Public is A-Okay

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According to the Montana Code of Law in 2013, if an individual fires off a round of ammunition to disturb the peace, they can be convicted of the offense of disorderly conduct. The penalty for the offense is a fine of up to \$100, ten days imprisonment in the county jail, or both.

There is little doubt such a law originated in the bygone days of the Wild West where guns were much more prevalent on the streets of Montana's towns and cities. As the deadly and disruptive power of firearms became apparent in peaceful communities across the state, such laws often became necessities and baselines for local sheriffs.

To the present day, law enforcement officials in individual communities refer to state law frequently in disorderly conduct offenses. Localized laws regarding this offense often limit the use of firearms but the penalties for the offense itself can be very subjective.

In 2013, Montana State Code listed the top five ways a person can be charged with the offense of disorderly conduct as: 1) by public quarreling or fighting; 2) making loud or unusual noises; 3) using threatening, profane, or abusive language; 4) discharging a firearm, except at a shooting range; and 5) rendering vehicular or pedestrian traffic impassable.

Representative Nicholas Schwaderer (R-Superior) insists that disturbing the peace by discharging a firearm is not disorderly conduct. He presents a bill to strike the language "discharging a firearm, except at a shooting range" from the law.

Schwaderer is a tall, youthful freshman legislator from Superior, Montana. Prior to his election to the House, he was a writer for a number of prominent libertarian and corporate-funded think tanks. Although a fifth-generation Montanan, Schwaderer did not complete his studies at the University of Montana, where he began; he instead worked to finish his degree overseas at the University of Plymouth in England.

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His legislation is usually somewhat out-of-the-ordinary so he commands the attention of the chamber.

"You have before you today a bill which goes in to 45-8-10 [of the Montana Code]; it's the disorderly conduct provisions. It lists about ten lines of code which describes what qualifies as disorderly conduct," he says, introducing the bill.

He continues without a script, "This is my first bill before House Judiciary and what we did is we just struck out one line." He reads the line of code aloud: "discharging firearms, except at a shooting range during established hours of operation." He explains that language in the code effectively makes it illegal to discharge a firearm anytime someone is not at a shooting range.

He speaks quickly, steadying his voice and showing no emotion, "This is redundant, unenforceable, kind of dilutes respect for the law. In committee we had no opponents, no questions and bipartisan support. With that I'll sit and rest for questions."

The bipartisan support in committee to which Schwaderer refers is in regard to one yes vote from Democratic Representative Bridget Smith (D-Wolf Point).

After delivering his opening statement, Schwaderer sits without any particular flourish and the floor is open to discussion. The Chair calls on freshman Republican legislator Carl Glimm (R-Kalispell).

Representative Glimm has a plain and direct manner. He is an attractive middle-aged construction engineer and volunteer firefighter from northwestern Montana, where he runs a custom home-building business with his wife. He wears tailored western suits which indicate a fastidiousness in his appearance and life. He is a man of few words while in the chamber.

"For once we have a simple gun bill that most of us can support, I think," he addresses the body.

Glimm indicates that the bill lets cities and counties establish their own laws to determine whether discharging a firearm would be disorderly conduct. "Why should we have a law in statute at the state level?" he asks the assembly.

"In most areas of the state, discharging a firearm is supposed to be perfectly legal and I, for one, am glad that I don't get written a ticket every time I discharge a firearm," he says with seriousness, adding, "so we shouldn't call it disorderly conduct because it should be legal.

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Thank you."

"I encourage a green vote," he says after concluding and sits at his desk.

The Chair calls next on Margaret or "Margie" MacDonald (D-Billings), one of the Minority Whips. MacDonald is in her third term representing a district in Montana's largest city. She is a soft-spoken older woman with a thoughtful stare and a ready smile. For over 14 years, she was the Executive Director at the Montana Association of Churches and has spent her recent career working for non-profit environmental organizations.

She speaks very clearly to the assembly, like a librarian addressing an interested class of pupils: "This bill reminds me a little bit of the old East Indian tale about the six blind men and the elephant. As it goes, there were six blind men and each of them was describing an elephant, and one described the trunk, and one described the tail, and one described the side. And they each had very tremendously different versions of what the elephant looked like."

MacDonald continues, "And if you look at this bill and you look at disorderly conduct, this is under the code for disorderly conduct. And there are a number of ways a person can disturb the peace under this piece of code. You can disturb the peace by quarreling, challenging a fight or fighting, you can disturb the peace by making loud or unusual noises. You can disturb the peace by using threatening, profane or abusive language. You can disturb the peace by discharging a firearm. You can disturb the peace by, you know, a whole list of things here but there is just one: 'discharging a firearm' that we're removing."

MacDonald appears perplexed by the request to change the Montana laws regarding disorderly conduct. She admits confusion about why Schwaderer or others would think this necessary, saying, "It's hard for me to understand how discharging a firearm in the context of the predicate here does not in fact, cannot at some point and time be considered disturbing the peace."

"It's not that every loud noise is prosecuted as disorderly conduct," she says, "and it's not that every quarrel is prosecuted in court, but certainly I can envision discharging a firearm could fall under the category of disturbing the peace."

MacDonald shakes her head as she looks to the papers on her desk

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and back out to her fellow representatives over the rims of a thin pair of glasses. "We might as well just throw out disorderly conduct altogether if discharging a firearm cannot ever be construed to be disturbing the peace." She says incredulously, "let's use some common sense here."

MacDonald returns to her seat and the Chair pauses for a moment before recognizing the next legislator in the discussion queue, Representative Krayton Kerns (R-Laurel).

Tall and fit with white hair and severe, skeletal features, Kerns has spent a lifetime as a rancher and veterinarian. A prolific blogger with extreme right-wing views, he is serving his final term in the House and throws his weight around as Chair of the Judiciary committee. A particularly prominent vein bulges in Kern's high forehead.

"Since we're talking about elephants," Kerns says, "let's talk about hunting elephants."

Kerns does not pause as he describes the scene, "Let's say you're outside of Ingomar, Montana and you're going elk hunting. You see one. You whip out your 30/30, drop down on your knee and you squeeze off the round and it discharges."

After a pause he says with a sneer, "You've just violated state law by discharging a firearm."

As he sits he makes one final statement: "There isn't anything about this being in town folks. This is discharge of a firearm, disorderly conduct."

The Chair calls for final discussion and freshman legislator Tom Woods (D-Bozeman) indicates a desire to speak to the issue. Woods is a professor of molecular biology and medical ethics at Montana State University. He is genial but spirited, and although only in his first term as a Democratic representative, he will wade into intense discussion on the floor when there is serious contention between the two parties.

Woods stands and looks about at his colleagues as he punctuates each of his words with a hand gesture, "A person commits the offense of disorderly conduct if a person knowingly disturbs the peace by discharging a firearm. That's the law."

Woods continues, "So you don't break the law by just discharging a firearm. You disturb the peace by knowingly disturbing the peace by shooting a gun off."

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He explains his perspective on the issue as it might pertain to him and his family. "This is for instances of in town where my drunk neighbor squeezes off a few rounds at 2 o'clock in the morning."

"That's disturbing the peace," Woods emphasizes, "It's not disturbing the peace because he shot it, but because he knowingly did it."

Woods sits and Schwaderer stands to begin his conclusion.

"Between elephants, camels, black helicopters we're having a lot of fun out here," Schwaderer pauses for a slight laugh from the assembly who might recognize references to his previous comments on the floor on other issues.

He continues, "The only feedback I got on the bill between when it was conceived and now was 'Gee, Nick, why aren't we taking more out of here?' because a lot of folks haven't been looking at this area of code until this came up."

He follows his line of reasoning further, "They're saying, 'Making unusual noises? There's some of us that do that all the time.'" There is an even scunter chuckle from the body.

"You know I'm amendable to amendments," he uses a phrase he has used on the floor before and gives a full pause to elicit a collective hearty laugh from the House, "but I think it's too late in the game. I think it's too late in the game. One piece at a time and I certainly would consider other bills down the line to deal with that."

Schwaderer is assured of victory. He is on the right side of the aisle in a pro-gun legislature. He displays a degree of cockiness when rambling on to draw his final conclusion, stating, "On the final point, you know—I didn't see this addressed because I think there's folks concerned probably—I haven't looked through other areas of code but we do have a pretty comprehensive body of law to deal with the bad things that you can do with firearms: you can't discharge across a highway, you can't discharge in the city limits except in defense. A lot of these issues that folks are concerned about are completely covered so the arguments are kind of irrelevant. But I appreciate the good discussion."

Fully confident that the bill will pass the house, Schwaderer smiles and confirms previous testimony, "This is probably the simplest gun bill you're going to get this session, so there you go."

The Clerk Records the Vote: 63 Aye, 37 Nay. *Law is revised to*

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reflect the discharge of a firearm does not qualify as an offense of disorderly conduct even if the person knowingly disturbs the peace.

Governor Veto: *No veto, bill becomes law, signed by the governor on April 22, 2013.*

Chapter 3: Establishing a State Historical Rifle

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The conquest of the American West has been an ever-evolving story. Originally, cowboys and settlers were heroes for triumphing over the Indians. From the perspective of the pioneers, a great Manifest Destiny was to be realized. From the perspective of the native people of all the Americas, their culture and peoples were decimated.

For over 160 years treaties have been negotiated and broken with American Indians across the country. In Montana, terms were no better than those in other areas of the west. Many tribes trusted the U.S. government to negotiate fairly for their lands and were, overall, deceived and defrauded in a series of treaties and in the worst cases, massacred in battles or for little cause. The physical legacy of the American Indian in Montana has mostly vanished except for the remaining seven small reservations scattered across the state and in the existence of the last genetically-pure American bison herd in Yellowstone National Park.

The heritage of Montana's earliest days provokes strong emotions in 71-year old U.S. Air Force veteran and retired timber broker Edward Greef (R-Florence). Although originally from Washington State, Representative Greef speaks now for the district of the rural and conservative Bitterroot Valley in western Montana. Greef has an idea to celebrate the shared history of the American Indians and the settlers who have inhabited Montana in the past.

He proposes to designate a rifle--the Winchester Model 1873--as the state's historical rifle.

Greef rises to introduce his bill on the floor and clears his throat. "Why place in our state's historical history any rifle, in particular this one?" Greef is a good-looking older man with bright blue eyes and white close-cropped hair. He wears a blue suit with dusty cowboy boots. He speaks clearly and with enthusiasm, following a meticulous script.

"The answer is the simple truth," he says, looking up from the

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script out to the assembly before continuing, "This rifle played a very significant role in our state's history. This rifle was here during the years we progressed from a lawless frontier into statehood in 1889 and then beyond into the early 1900s. This rifle was at the Battle of the Little Big Horn in 1876, used not by the military but by the Native Americans. The rifle was here in Helena during the years Marcus Daly and William Clark were twisting arms and buying votes to decide if Anaconda or Helena would become the [state] capital."

Greef does not pause as he continues the introduction of his legislation. His surrounding representatives, Republicans flanking him on each side, sit back and watch his oration with reverence, nodding at one another and giving him their rapt attention.

"History is important," Greef says, eliciting a chorus of nods. "It is a valued part of our culture. And here's why: I start with these basic assumptions that all peoples are charged with responsibilities to themselves and each other, that we are charged to be good stewards, and that we are the keepers of the place where we exist. I see this bill as keeping with those charges because to better understand where we are going we need to know where we have been. This is our opportunity to do just that by placing in our state historical records the rifle that played a very prominent role in the early years of developing from the lawless frontier land in the 1870s to the wonderful state we call home today."

Greef explains the significance of the Winchester 1873 rifle with a profound seriousness: "As synonymous in the Montana frontier as a good horse was the Winchester rifle that hung in the scabbard."

Greef then points to specifics of Montana's state seal, indicating that the seal shows in the background mountain peaks and the Great Falls of the Missouri and in the foreground a pick, a shovel and a plow.

"On the left are some trees," adds Greef, "And it is my speculation that if we could look really, really close there is likely a Winchester 1873 leaning against one of those trees."

Greef indicates the number of Winchester Model 1873 rifles in possession of the State Historical Society museum across the street from the Capitol, noting some were even owned by notable American Indians such as Chief Sitting Bull. He urges the body to be good stewards of history, vote for this bill and consecrate what he and oth-

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ers consider a symbol of Montana.

The Chair calls for discussion on the bill and Representative Lea Whitford (D-Cut Bank) asks to be recognized. Whitford is a freshman legislator from the Blackfeet Indian Reservation in northwest Montana. She is a middle-aged American Indian with long dark hair and almond-shaped eyes. A native Montanan, she works as a department chair at Blackfeet Community College and runs a small trucking company with her husband.

The representative takes a deep breath to begin her plea, "I'm going to stand in opposition to this bill.

"Excuse me," Whitford fumbles as she speaks and asks permission of the Chair to address the bill, an unnecessary formality often practiced by novice legislators. She does not often get up to speak on the House floor and appears visibly flustered and passionate. Her nervous blustering when speaking on the bill starts to create an edge of tension in the assembly.

She begins again solemnly, "A couple of weeks ago I asked you to stand in a moment of silence and that was in recognition of a massacre that took place on the Marias River which is just south of Shelby."

Whitford refers to an incident in Montana history in 1870. A reported 140 women and children were shot or killed when the U.S. Army opened fire on a peaceful tribe camped on the Marias River.

Whitford pauses for a moment and then continues to ramble over her testimony without notes. She continues earnestly, attempting to connect the horrific details of the massacre and the rifle of historical significance indicated by Representative Greef.

"When they did the excavation of this site," Whitford says, indicating the Marias site, "there were [rifle] cartridges and bullets there."

Whitford stumbles over her words, losing her train of thought and leaving out pertinent details. She says she wants to address the symbolism that Greef has mentioned, "As a Native American and the people that a lot of you are representing here as representatives of all of Montana, you need to take into consideration what this history has done to the people of this state, including the indigenous people that have been here since the beginning."

The creak of the House door is heard as a number of Republican representatives step out of the chamber during Whitford's discussion. It is not uncommon for members of the House to stand by the marble

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columns which support the gallery or at the back of the chamber when there is discussion on the floor. Some even leave the House floor during a discussion, many times to take or to make an important call or to meet with lobbyists or members of the Senate. Certainly in sessions lasting for many hours, members rise and leave to use restrooms or get snacks. Overall, members present are expected to be in their seats for voting and the majority of discussions, and when a number of representatives leave the floor during a discussion it is generally recognized as a snub.

Whitford is not deterred. She continues, "1875 is when we first seen the disappearance of the buffalo, the bison, and in 1878 we started seeing the effects of starvation among the Indian people. And that is due to the fact that people were using such repetitive [action] guns to decimate the animals, the wildlife upon the plains."

The representative becomes more comfortable with her narrative as she explains, "It wasn't just the Indian people who were having to starve. The territorial people of this state were starving as well because this staff of life was being killed off."

She asks the assembly how anyone could ask her or any representatives in the chamber to glorify this device. How could they not consider those "who have felt the effects of the decimation of the bison on their culture?"

"Even when it's one hundred and some years later, two hundred and some years later, five hundred and some years later, it doesn't matter. I think you need to be cognizant of all the people, including the constituents that are of Native American background," Whitford stresses. She adds quickly after her conclusion that the body might do well to consider the bow and arrow a more fitting weapon to commemorate before replacing her microphone with a flourish and being seated.

By the time Whitford concludes her rambling discussion, the representatives who absented themselves have re-entered the chamber and are certainly still prepared to back their colleague Greef in supporting his legislation to create an official state historical rifle.

The Chair then recognizes Representative Carolyn Pease-Lopez (D-Billings), a college advisor and Baptist pastor from a community north of the Crow Reservation. Pease-Lopez is a quiet and forceful presence in the House chamber. She is serving her third term and is

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comfortable with the procedure of discussion on the floor. Like Representative Greef, Pease-Lopez is an older member of the House, a proud grandparent and likable personality. She has worked in Montana's largest city, Billings, as a student advisor at Rocky Mountain College.

Pease-Lopez has a gravitas and peaceful demeanor that command respect from her fellow legislators. Her round face frames a genuine smile and she opens her oration with apologies to the sponsor of the bill: "Representative Greef has made every effort to bring this to the floor in a diplomatic manner and I appreciate that," she assures her colleagues.

"When I was a young girl," Pease-Lopez says as she looks about the room for connections to a shared past, "going to the movies, that cost—believe it or not—forty cents to go see a movie." She continues with a gentle chuckle. "In my era, when I was a child, the dominant theme was Westerns. We went to the Westerns in a predominantly Indian community and guess who we rooted for? The cowboys!" Her anecdote solicits a hushed intake of breath from the chamber.

She continues, "And we didn't realize the significance of how brainwashed we had become. We had no awareness. And then there came movies that portrayed the reality of the death and the reality that our ancestors suffered such as 'Cheyenne Autumn.'"

Pease-Lopez continues her speech and begins to hold back emotion as she describes the horrific realities of generations that came before her. She speaks with forceful presence and deep distress in a relation from the heart: "I guess that was my wake-up call—to see pregnant women being shot and children being shot." The representative takes a moment to compose herself as she fights back tears. She takes a breath and continues.

"You might think, 'This is in the past.' Well, for me this is not so much in the past because two of my great-grandmothers saw Custer ride by," Pease-Lopez says, having regained her eloquence and speaking with force. She stresses her link to the near past, explaining, "I had close relationships with those women. They're not just somebody in history. The things that happened are not so far removed. And there is such an evidence in our culture, I know it's a ho-hum subject for some, but in me, in my community, historical trauma still spans the generations."

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The representative abandons her notes and addresses the assembly and the sponsor. "And so, for this reason—with my apologies to the sponsor, because I know he did his best—I must rise in opposition of celebrating a weapon such as this that caused devastation among my people."

She concludes with a soft, "Thank you," and is seated. The atmosphere in the House is raised to an alertness nonexistent before she began her short speech.

Very rarely, if ever, do House members appear to change their likely decision on a vote after discussion is underway on the floor. Each representative is usually sure of his or her vote on any bill before entering the session for the day, having been lobbied by professionals and their colleagues and seatmates. In this instance the hush in the House chamber is indicative of a significant change of heart.

The Chair indicates all representatives have withdrawn their desire to speak on the issue and there will be no further discussion. She asks Representative Greef if he would like to give a closing argument.

No one could envy his position, standing alone against members of the Indian caucus on an issue so symbolic yet so grave. His own attitude seems to have shifted and seems weak and diluted in his closing statement: "I urge you not to look at the rifle as a weapon, but to look at the rifle as a symbol of the place and time when we came from the early frontier, to gold mining, to drifters, to unsettled land and progressed into the early 1900s."

When the Chair calls for the vote, the sweeping change of heart on the floor is apparent.

The Clerk Records the Vote: 39 Aye, 61 Nay. Bill fails..

Chapter 4: A Gold Mine of Dinosaur Bones

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Makoshika State Park is the largest of Montana's state parks at more than 11,000 acres. Located in the arid eastern part of the state, the park contains spectacular badlands and the 60- to 70-million-year-old Hell Creek Formation, most famous for its dinosaur fossils.

Several complete sets and many more partial remains of dinosaur bones have been found, including those of Triceratops and *Thescelosaurus*, a rare dinosaur found in 1997 during an expedition led by Montana paleontologist Jack Horner. Horner's scientific persona was fictionalized in the *Jurassic Park* film series.

Dinosaur bones mean big money. In a growing commercial and black market where T-Rex teeth go for \$1,000 an inch, field teams must be vigilant to actively protect sites in any area of the region from theft.

Makoshika lies in the rural eastern Montana district of Representative Alan Doane (R-Bloomfield), a Tea Party member.

Doane, a rancher and construction worker by trade, is concerned about funding for the state park in his district. He proposes a bill which envisions a novel way to raise funds for the park: change state law to allow for the sale of dinosaur fossils from Makoshika State Park to raise funds to benefit the park and improve the park's road system, among other things.

Currently in Montana law, all heritage property and paleontological remains can be collected only under an antiquities permit. All remains are then the "permanent property of the state and must be deposited in museums or other institutions within the state," except the paleontological remains recovered at Makoshika State Park, as proposed in the language of Doane's bill.

The representative from Dawson County rises from between his two colleagues sitting on the State House floor to speak in defense of his bill. Doane is built of sturdy Montana ranching stock, fifth-generation. His ash blond hair is buzzed close, tapering to a receding widow's peak. Doane's most discernible feature is his large and bushy close-cropped mustache. He wears a purple shirt and a grey tie with

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his stone-colored suit.

"This is a fun bill I have here in front of us today," Doane says, his voice squeaking a bit. "Makoshika Park is in my district. It's the state's largest park, over 11,000 acres, 11,600 acres," Doane informs the body.

He doesn't pause, reading from a script he holds in one hand while speaking into the microphone he's pulled from a stand in his wooden desk.

"Makoshika is a Sioux word," he continues, "It stands for the 'bad lands' or the 'devil lands.' I can imagine a couple hundred years ago a Native American coming along and finding a Triceratops skull sticking out of a bank somewhere; that would probably give the person the impression of maybe some 'devil lands' there.

"It's a really nice park, but it's in poor repair," Doane's voice squeaks and strains again as he continues.

He says the one main road going straight through the park is in bad shape. Three-quarters of the park lies beyond a series of switchbacks on this road, he explains.

"Two years ago after a tough winter—it's highly-erodable gumbo soil—the switchbacks all slid down into the coulee down below there making three-quarters of the park impassible for quite a number of—for quite a long time," Doane says.

"An engineer's report has looked at it and it could take up to ten million dollars to fix that road properly," he adds. According to Doane, there are emergency radio towers beyond the switchbacks, a Lion's youth camp and an archery range.

"There's some really nice assets back there that aren't accessible when the road's out," he adds.

According to state park officials consulted after the session, the road that Doane described in the park was already under construction with improvements slated to be completed within the year for a total cost of \$1 million. Funds for the road improvements were accounted for in the state budget passed during the session.

The state park needs funding, Doane insists, so he proposes a novel way to turn the fossilized treasures of the park into modern-day gold.

"Right now you can currently get an antiquity permit to dig fossils. There's quite a number of fossils been dug out of there in the

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Museum of the Rockies in Bozeman. It's full of fossils from Makoshika," Doane says.

He again explains his bill will provide the "ability for the park to sell fossils or paleontological remains for money to benefit the park."

Asked after the session to clarify this statement, a staff member at the Museum of the Rockies counters this assertion. The idea of excavating and buying a dinosaur from Makoshika State Park is not particularly attractive, says the staff. The museum has a scant purchase budget for collections and operates under strict federal and state laws governing antiquities.

For anything collected on government land, an agreement is worked out ahead of time to determine specific details of where, what, and how much material is collected and the repository, or where the materials will be stored, housed or displayed. The vast majority of the artifacts and paleontological remains in the Museum of the Rockies collection are only on loan.

Doane seems unaware of regulations in place for collecting remains on state land but he says his bill permits anyone from a university, educational organization or society, or just about anyone who can prove they would like to spread knowledge about the heritage of the paleontological remains to enter the park and dig out exposed fossils, sell them, and give the money back to the park.

The economic incentive for the diggers is unclear.

"There's educational opportunities for schools here," he says. "The antiquity permits are only issued to museums, universities and colleges, and reputable places to do the work. That part would not change."

Universities and organizations across the country operate in basically the same manner as the museum in Bozeman. The process of excavating remains and placing them in museums and universities is complicated with legal guidelines spelled out in both state code and federal law.

Doane neglects to mention the change indicated in his bill regarding who can own these 'found' dinosaur bones. Under current law, these remains must stay within the state and in museums and universities. If Doane's bill passed, then this requirement would still be the law for all Montana antiquities sites with the sole exception of Makoshika State Park.

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Doane voices concern about the fact that the fossils are "erodible resources".

"Once they are exposed, they erode and go away," he says, "These are non-renewable resources—unless you go to the Jurassic Park theory—so I don't think we'll be seeing any of these come back again."

Doane has larger plans for all of the parks across the state. He indicates that a similar scenario would work out well in many state-owned natural or historical sites: "There's a sunset clause on this so I'm viewing this as a pilot project to see how this would work around our state." Doane wraps up his introduction to the bill quickly and sits down. The floor opens to discussion.

Representative Ed Lieser (D-Whitefish) is the first to comment. Lieser is a wildfire scientist from the Glacier Park region in his later middle age. He studies his notes for a moment before responding.

"I'm going to oppose this bill," he says. "During discussions with administrators subsequent to the hearing they actually expressed a fair amount of concern for the ability of the agency to administer this. They envisioned an increase in the amount of activity that could be experienced as a result of this. Excavations and other related activities could create adverse impacts to the park. "

Representative Lieser speaks slowly and thoughtfully, checking his notes often in his short commentary. He looks around the room and nods at the assembly before stressing his final point. "Part of the attraction to the park is the presence of these fossils. Removing them at an accelerated rate removes the value of this park," Lieser states plaintively.

"I appreciate the efforts and attempts by the sponsor to be creative in trying to generate revenue but I'm going to have to be a 'no' vote on this," he concludes. Lieser sits.

The Chairman of the House calls on Representative Duane Ankney (R-Colstrip), the former mine superintendent who represents a district in Montana's coal country.

He begins his testimony by standing, shaking his head and turning from his position in the front row to face the assembly. "I've long been an advocate for state parks but I'll tell you what," Ankney pauses and takes a huffed breath, "it's hard to get money for state parks!" The members of the floor perk up at his sing-song voice.

"We had a survey done by—he was the director of the Arkansas

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State Parks—come through Montana last year, did an evaluation," Ankney says, "One of his comments was 'that park needs a lot of work!'"

"Excavation activity and the loss of the fossils in the park ain't going to take a thing away from that park," Ankney adds.

"You could excavate a dinosaur out of that park and it's going to be done—if it's ever done—it's going to be done with people watching everything they do," Ankney says.

He assures the body that no one will be the wiser. "Put some plaster bones back in a hole and people are not going to know the plaster bones from the real ones," he explains, nodding and soliciting the expected murmur of laughter.

Ankney says the windfall waiting to be collected by the sale of Montana's artifacts is tremendous, noting he "can't even imagine how much money you would get out of one of those dinosaur fossils.

"It could really help that park along," he adds.

Ankney takes off on a short tangent considering parks across the state. "There's other parks that have artifacts and stuff that's stuffed away in boxes with water leakin' on 'em. They're rotten."

He proposes a novel idea to turn any and all artifacts being improperly stored by state park sites into funding dollars. "If they ain't got a place to put them they need to sell that stuff and fix these parks up so families can enjoy the parks."

Ankney concludes his rant, saying visitors to the park will not miss a few dinosaurs and the tradeoff will be worth it. "They really don't care about a dinosaur they can't see anyway," he says, "So this is a darn good bill. It goes a long way to fixing these parks up."

Representative Bridget Smith (D-Wolf Point) rises to comment. Smith is a white woman who won a landslide victory in an American Indian district in eastern Montana. She is a normally-soft-spoken, middle-aged social worker with pale blue eyes and short cropped hair. Smith finds her voice on the floor.

"Makoshika is in my area of the world," she says, "And I just want to ask why would you sell the treasures? When they're gone, they're gone."

Smith agrees with other representatives that the park does need some help, "but we should look for the dollars someplace else," she stresses with a stern voice.

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"Once you open that door, looters will have a free market," Smith frowns and looks about at her colleagues as she speaks, "I don't think it will be easy to watch them." Smith shakes her head again and takes her seat.

In 2005, Makoshika State Park solicited public input and presented a management plan admitting existing issues with theft of fossils in the park. The report states that fossil and artifact theft are an ongoing problem throughout the park. Protecting artifacts and fossils when they are unearthed and ensuring agency ownership are noted priorities in the 2005 plan.

Park policy states that nothing should be touched or removed from the park. Many fossilized remains can be seen and accessed through established and off-road trails and apparently it's already very difficult for the staff to police every exposed site.

On the floor, Representative David Halvorson (R-Sidney) asks the Chair if he can pose a question to Doane about his bill. Halvorson, a former radio announcer, serves an area adjacent to the state park. He is a freshman legislator but bears the appearance of a seasoned lawmaker, having worked as staff in previous legislative sessions.

He handles the microphone like an expert as he asks Doane, "Who will be harvesting these antiquities, items under your bill?"

Doane rises and answers plainly, reading from the bill: "Antiquity permits will only be granted after careful consideration of the application for the permit. These permits will only be granted to, I quote: 'reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons.'

"They're not just going to give this to anyone," he assures Halvorson. Representative Halvorson indicates he has further questions and the Chair recognizes the request.

"Go ahead," the Chair says.

Halvorson addresses Doane again, asking him about the antiquities that might be discovered, while gesturing with his free hand, "Would these be just naturally exposed or would there be some kind of wholesale mining enterprise going on?"

Doane answers him without consulting any notes. "My understanding of the process is they have to be partially exposed before anybody can discover where they are.

"I'm not a paleontologist or any other kind of 'ologist' so I can't

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speak to that specifically," Doane admits. He cites a neighbor who had antiquities on his property and others in his neighborhood who had experienced the process.

"They have to be partially exposed," he adds with more surety, "And that's the problem. Once they're exposed they erode and they go away. And it's a natural resource that's being wasted."

Halvorson completes his questioning and the pair of representatives sits.

Another representative from a district neighboring Makoshika, Mike Lang (R-Malta), rises to make comments on the discussion. He is a silver-haired, plain-spoken Certified Crop Advisor from a dusty railroad town in eastern Montana.

He assures the body that excavations will be conducted professionally, explaining, "These people that go and do this stuff are very careful."

Lang describes the find of the mummified dinosaur "Leonardo" in his district. He says he witnessed the removal of the fossil and testifies how meticulous the process was for extraction. He explains that years later, no trace of disturbance was present at the excavation site.

"You can't even hardly see where they've been," he says.

He gives a shout out to a potential customer. "I hope Jack Horner is listening [so] that he can get some money together and take a dig down there and get that dinosaur paid for to the park and put it in the Museum of the Rockies and that's the way this stuff works.

"Do pass. Let's get some money for these state parks. We have a treasure here." he concludes.

The Chair then recognizes JP Pomnichowski (D-Bozeman). Her district of Bozeman lies in the south central part of the state, far from Makoshika but home to paleontologist Jack Horner and the Museum of the Rockies.

Representative Pomnichowski is a middle-aged woman with long silver hair puffed in a low pompadour at her forehead. She wears square-framed glasses and has the look and manner of an enlightened schoolteacher. She has been a firefighter for much of her life but continues to work on city and university boards and planning departments in her district.

She stands to speak but pauses. When she makes her statement it is with a sigh. "Members of the body, I'm amazed."

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She pauses again, shaking her head before continuing. "Our national parks, our state parks are places that we as a society have decided to set aside so everyone can enjoy them.

"You can't pick a flower in a national park," she emphasizes, "And now we're proposing to dig remains for sale for the benefit of the park?"

"For what?" she asks, "Would you go to Pictograph Cave if the pictographs were gone?"

She relates a tale from the floor. "Earlier this session, we heard from a representative who took his grandkids to Lewis and Clark Caverns. How would that visit have been if the stalactites and stalagmites had been sold to quote, 'benefit the park?'"

"I urge you to vote against this bill," she says, looking about her briskly as her long silvery-white hair whips around her shoulders.

She warns her colleagues, "It is an incredibly dangerous precedent to set."

No other representatives indicate a wish to speak, so Representative Doane rises to deliver closing testimony on his bill.

Doane's voice squeaks again in a nasal-high tone as he launches into his conclusion. He responds to Pomnichowski's comments by assuring her, "This isn't like some pristine wilderness area. There's emergency towers in there, the Lion's youth camp, archery ranges and things going on there.

"This is not like a park where you can't go pick a flower," he says with a huff.

He concludes, "I think this is a win-win for the state, it's a win for park, it's a win for education. And we're going to do this with a non-renewable resource that's just wasting away anyway."

The Clerk Records the Vote: 60 Aye, 39 Nay. Bill Passes. *All heritage property and paleontological remains collected in Montana under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state with the exception of paleontological remains at Makoshika state park.*

Governor Veto: YES. *Governor Bullock vetoes HB 392 on April 25, 2013. His veto letter says, in part, "HB 392 sets a terrible prece-*

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dent for the management of our state parks. Montana has never allowed the sale of our paleontological remains. The paleontological remains at Makoshika State Park are a treasure for all Montanans to enjoy, now and for future generations. To allow the remains to be sold off ignores our obligation and responsibility to protect our state's history and manage our state parks in a thoughtful manner. To use the proceeds from the sales to benefit the park does not convince me otherwise, since funding the park should not require the sale of the very assets that make the park a unique, historic place.”

Chapter 5: Going Against the Herd

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The American bison, commonly referred to as the buffalo, is an icon of the uncivilized west. Yellowstone National Park is the only place in the U.S. where bison have lived continuously since prehistoric times. The Yellowstone bison comprise the nation's largest bison population on public land and are among the handful of bison herds that have not been hybridized through interbreeding with cattle.

The Yellowstone herd is the only herd genetically identical to the millions of animals who roamed the North American plains hundreds of years ago.

According to the National Park Service, 30 to 60 million bison roamed North America before the mid-1800s. Market hunting, sport hunting and a U.S. Army campaign in the late 1800s nearly eliminated all bison from the Western landscape. Today approximately 4,000 animals reside in and around the Yellowstone National Park area. The park is the only place in the contiguous 48 states where wild, free-ranging bison have persisted. This existence would not have occurred without dedicated effort from mankind.

By 1900 an indigenous herd of only 23 individual bison existed in the park as a remnant of the entire bison population of North America. In 1902, the U.S. Army administrators of Yellowstone National Park created another herd in northern Yellowstone by bringing together a female bison from a ranch in northern Montana and a few males from Texas. Protection and stewardship along with supplemental feeding allowed the Yellowstone bison to reach a population of 1,500 animals by 1954. In 2012, the Yellowstone National Park bison herd was estimated at approximately 3,200 individuals, still far below the peak of 5,000 animals in 2005.

Yellowstone bison are migratory wildlife, not livestock, and are not managed like domestic stock on a ranch. Bison are generally allowed to move freely within the park, though some intervention occurs near the park boundary and developed areas to reduce conflicts with humans and outlying jurisdictions.

Although state and federal officials continue efforts to increase

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genetic diversity in the Yellowstone herd, large portions of the original range for bison are no longer available outside Yellowstone and Grand Teton National Parks. Furthermore, there are political and social concerns about allowing bison outside these parks, including human safety and property damage, limited funding for management, competition with livestock for grass, consumption of agricultural crops, and spread of disease.

Between 1984 and 2000, more than 3,000 bison that migrated outside Yellowstone National Park and into Montana were harvested by hunters or culled from the population to prevent the possible transmission of brucellosis from bison to cattle.

Brucellosis is a disease caused by the bacterium *Brucella abortus*, which can cause pregnant cattle, elk, and bison to abort their calves. Cattle brought this non-native disease to the region when pioneers settled the West. Bison have not been known to transmit brucellosis to cattle under natural conditions although transmission is biologically possible and has occurred in captivity. According to the National Park Service, many bison and elk in the Greater Yellowstone Ecosystem have been exposed to the bacterium that causes brucellosis.

Today, all cattle using overlapping ranges with bison are vaccinated for brucellosis when they are calves. Still, management strategies attempt to prevent bison from commingling with cattle in an effort to prevent any potential economic loss to cattle producers.

Since 2011, bison have been allowed to migrate out of Yellowstone National Park during winter. In the spring they are hazed back into Yellowstone or into holding facilities. Some bison are also available to licensed hunters and to American Indian tribes exercising historical treaty hunting rights.

The State of Montana and the federal government have worked out an Interagency Bison Management Plan to reduce the risk of brucellosis transmission from Yellowstone bison to cattle while conserving a population of bison. In order to reduce hazing and ad hoc killing of errant animals near Yellowstone and to increase the genetic diversity of the herd, the Montana Department of Fish, Wildlife and Parks (FWP) continues work on a draft plan for broader bison restoration options, including the relocation of a small genetically-pure herd outside the park to the Fort Belknap Indian Reservation in the north-central part of the state.

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Reintroducing the native bison to areas bordering agricultural lands causes serious concern in many Montana ranching communities. As a ranch operator, Representative Alan Doane (R-Bloomfield) from Eastern Montana has a solution to the problem: allow private property owners to shoot bison on sight.

Representative Doane brings the bill to the floor of the Montana House on Valentine's Day in the Capitol. Nearly every wooden desk on the floor is topped with a bouquet of flowers.

"This is a bill I brought in response to a scoping session put on by FWP that I went to last year in Miles City, Montana." Doane stands in the House chamber and opens the discussion on his proposed bill, speaking without using his notes. "They propose nine different places in Montana to possibly put a herd of 1,000 free-roaming bison," Doane continues, "They have no plan to herd these animals. They have no plans to contain them in any way, shape or form. The closest one to my district is north of Terry, Montana."

Doane barely takes a breath as he continues, his voice squeaking in a sing-song tone as he uses every word to draw effect to his point. "They are planning on placing these bison in the badlands and bison are pretty smart animals. They're migratory animals. I don't think they will stay in the badlands very long. I think they're going to come to the good lands. The good lands are the agriculture lands. We have no way to protect ourselves so this bill is in response to that."

The representative pauses to pick out a line of code from Montana's law books. He looks to papers on his desks and reads the law, "Statute 87-1-216, subsection four: The department may not release, transplant or allow bison on any public or private land in Montana that has not been authorized for that use by the private or public owner."

Doane looks around at the members in the chamber as he explains the logic behind his proposed legal update. He says he is concerned that Montana's Department of Fish, Wildlife and Parks will not do a good job containing the wild bison that will be tentatively relocated across the state.

"My bill is pretty much useless as long as FWP does their job," Doane says. "If FWP does not do their job, if they break the law, then my bill will come into place. All it does is allow the private property owner to do whatever he deems necessary to get the wild bison off of

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his property." Doane clarifies a few times that his bill will not affect existing legislation regarding the hunting of tribal bison.

"This is a private property protection bill. It allows our number one industry, agriculture, to protect itself if it has to," he says.

He describes the potential for conflict on a remote ranch. "It's pretty hard to tell somebody how to deal with a dangerous animal. Three times more people are injured by bison every year than by bears. We can't sit here in Helena and tell someone over in Wibaux, Montana how to deal with a dangerous animal. We have to let them deem how to do that on their own private property themselves."

Doane finishes his argument and sits for questions.

Representative Bill McChesney (D-Miles City) requests the opportunity to speak to the bill and is recognized by the Chair. McChesney has a familiar voice in the House, speaking nearly every day in session to the middle of issues both right and left of his political leanings, which are mostly Democratic.

McChesney represents a remote town of 8,000 people in the semi-arid southeast corner of the state. He is a former educator and truck driver with a gravelly voice and a genial personality. His stature and demeanor, including a dark beard and mustache and a trademark tweed coat, could indicate he was a college professor.

"I co-signed this bill and in principle I think it's a great bill," he says, but admits to now having some hesitation supporting the legislation.

"Unfortunately, it sometimes happens after the fact you receive more information." He indicates a sentiment common among legislators. Much of the discussion that evolves after a bill is filed reveals minute details overlooked by those not intimate with the bill language or its process in becoming a law.

McChesney says he has some real concerns about the bill as it's currently written, mostly that it could undermine "years and years of tough negotiations that took place in creating the buffer zone around Yellowstone Park," efforts which have shaped the bison policy at local, state and federal levels.

He admits he shares Doane's concerns about protecting landowners from errant wildlife, "If we're going to relocate these animals, a lot of responsibility rests on Fish, Wildlife and Parks. If they don't do their duty, the landowner should have some recourse.

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"I'm really torn on this one because of the Yellowstone Park issue," McChesney says. "It's not just an oversight matter." He adds that the time invested in negotiations about bison roaming outside Yellowstone has been extensive.

"I'm afraid the bill as it's currently written could do irreparable damage to that," he says in closing and steps away from his microphone while looking directly at the bill's sponsor, Alan Doane.

Another representative, Kelly McCarthy (D-Billings), a young freshman legislator, indicates he would like to ask the sponsor of the bill a question. He points out a specific line of text and says he needs clarification as to whether or not a landowner would be required to contact the state agency if a bison were killed by an individual.

"There is not a requirement for the landowner to notify Fish, Wildlife and Parks?" McCarthy asks.

"That's correct," Doane assures him.

"Does that mean that the carcass of the animal would just rot in the field?" McCarthy asks in an incredulous voice.

"It would be up to the landowner," Doane tells him, "It's his land, it's his private property. It would be up to him to do whatever he chooses to do with it. If he chooses to bury it—it's up to the private property owner."

"So," McCarthy continues, "Could the landowner butcher the animal?"

"If he so chose," Doane answers curtly.

Doane and McCarthy sit just two rows apart across the center aisle of the House. Doane appears frustrated by McCarthy's questions when he takes his seat. His fellow representative continues to express concern about the language in the bill.

"This just seems like a horrible waste of wildlife to me, to shoot something to leave it rotting in the field," McCarthy says, and notes in closing he will not be voting for the bill.

Representative Kathleen Williams (D-Bozeman) stands to provide her perspective. Although a Democrat, Williams' straight talk and thoughtful discourse often endears her to the other side of the aisle. She is a self-confessed sportswoman who has a professional history as a policy analyst for natural resource issues in the region. She is middle aged with silvery, feathered hair and flawless tanned skin. Her face is sharply-defined and her aquamarine eyes piercing. Although

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only in her second term and in the minority, she commands respect on the floor of the House.

"I think we all acknowledge that bison management has been a difficult and contentious issue in Montana for many years," Williams says as she addresses her colleagues. She clarifies that the bill language applies to "wild" bison, which would indicate the bison in Yellowstone National Park as well as some tribal bison.

"I understand the original intent, and the concern about the potential for relocation and translocation," Williams continues. She says Fish, Wildlife and Parks already must follow complicated procedures before and in the process of relocating bison, including formulating containment plans, getting public input, and other specifics.

"The ability to deal with bison that are threatening livestock or public safety already exists in statute," she says, backing up her statement by reading a list of statutes in law that allow for dealing with wild bison on private lands, code which even includes provisions for destruction of bison that might be threatening humans or property.

"It's legal to kill an animal threatening people," she says. "You can also kill an animal running at large." She continues by listing further laws in code which allow for the protection of people and property from wild bison, and laws which even provide for compensation of any lost stock animals.

"So, basically the only thing this bill does that isn't already in statute is allow, as many of you may have heard, shoot-on-sight for private property owners of wild bison," Williams says, indicating this will likely affect the area around Gardiner, Montana, the area around Yellowstone National Park, and potentially even tribal lands.

She shuffles the papers in her hands, lies them on her desk, and looks around at her fellow legislators before pausing and shifting her discussion to the conclusions of court cases which have examined the issue. She cites specifically one case in which the courts found the legislative intent of existing law to be directly opposite the intention of the sponsor's bill.

"There are also court cases which admonish us to attempt to peacefully coexist as best as possible with wildlife in Montana," Williams explains.

She indicates the fiscal note on the bill where state agencies estimate they will have to dispose of more than two hundred carcasses on

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private land annually if the bill were to become law. The cost seems prohibitive, she says.

"These are public wildlife. They do not belong to the private property owner; they belong to the state," Williams says sharply.

"This is a shoot-on-sight bill for wild Yellowstone National Park and tribal bison," she reiterates. She references the public process of the Interagency Bison Management Plan that many people have worked on over the past decade to deal with the continuing issues of management of bison in Montana.

Williams closes her statement with a quote from someone who has been working as a participant in the process of crafting such a plan. " 'We have made so much progress outside the halls of the legislature on this issue but certain legislators seem so willing and remarkably able to take us all right back to the lowest common denominator.' "

Williams encourages a "no" vote on the floor and instead urges continuing collaborative work on the issue with the variety of individuals, state agencies and organizations.

Representative Lee Randall (R-Broadus) rises in support of the bill. Randall is young and broad with a fair and freckled complexion. His hawk-like nose dominates a round and ruddy face topped by a shock of orange-red hair. He is a legislator from southeastern Montana serving his third term representing a sparsely-populated rural area. Randall is a Republican, a former teacher and a current rancher who receives regular farm subsidies. On his campaign website he notes that the very idea of compromise is something he views as "sacrificing freedom."

"This is a good bill," Randall says casually as he stands to make his case. "Members of the body, wild bison are not deer. Wild bison are large, dangerous animals and when they are on your private property, they can be an imminent threat almost immediately. They can be destroying property. They can be threatening your children."

Randall shrugs his shoulders and looks about the room, shaking his head as if brushing off a crick in his neck as he continues, relating testimony from the committee where the bill was first heard. "In testimony we heard one gentleman say, 'Why are we letting the bison run free through our town and pinning our children up?'

"Why are we doing this?" Randall asks as he shakes his head, re-

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places his microphone on its stand on his desk and takes his seat.

Representative Alan Redfield (R-Livingston) weighs in on the issue. Redfield represents the district around Livingston, Montana, which includes the buffer zone north of Yellowstone Park. He is a retired high school shop teacher who won his rural district unopposed. A rancher raising Angus cattle in Paradise Valley just north of Yellowstone, he displays a swagger and attitude of being better-informed on the issues than his colleagues.

In a deep voice thick with a Montana country drawl, Redfield stresses there is no longer a buffer zone in the Yellowstone area.

"There are two areas around Yellowstone Park where bison are allowed to roam," he clarifies, "and the biggest problem—and I hate to say this—but I agree with our former governor on one issue: Why is the State of Montana paying for Yellowstone National Park's problem?"

"We have way too many bison in the park," he says. "They have to eat so they have to come somewhere."

Redfield puts a hand in his pocket and continues without guidance from any notes,

"Right now there's a hundred bison on the Cutler meadow right across from the cattle guard," he says, and continues in a steady, monotonous voice, a hand in one pocket, "There's no forage on the hills that they say is part of the 175,000 acres that they can now roam. Most of that acreage is vertical. So it doesn't really work. They go to the bottoms."

Redfield slows his speech to enunciate each word. "The first day that they turned them out and I asked this question when they were talking about turning them out: 'How soon do you think they'll cross the river?'"

Redfield says he was told they would not cross the river.

"I looked at the man and said, 'I've got an Angus bull and if there's a cow in heat across the river in high water, he'll get there.' So the place where they crossed is about knee-deep on me, so I knew they would cross," he says and pauses for a moment before continuing.

"I got a lot of emails on this particular issue, both ways, because I represent the area around the park," Redfield says. He admits the issue is contentious, and he doesn't think the controversy will ever be resolved. He says the Interagency Bison Management Plan is "a noble

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effort that is not working" because one partner refuses to participate: Yellowstone Park. Indicating that Yellowstone has a target population of 3,500 bison, Redfield wonders aloud where these bison will go.

"I would like to see some solutions," Redfield says. "I don't think that killing them is always a solution. But everybody that sent me an email from Europe, from the East Coast. I'd like them to come get one [a bison]. We'd appreciate it."

He sits quickly and a few on the floor and in the upper gallery clear their throats loudly.

Representative Clarena Brockie (D-Harlem) is recognized by the Chair. She is a dean at Aaniiih Nakoda College on the Fort Belknap Indian Reservation and a member of the tribal caucus.

The Fort Belknap Reservation is shared by two American Indian tribes: the Gros Ventre and the Nakoda. Fort Belknap was slated to receive part of the herd of pure-bred American bison from Yellowstone National Park as part of range expansion efforts.

Representative Brockie is in her first term and is an energetic speaker on the floor.

"I don't see anything in the bill that excludes tribes," Brockie says, adding, "Sooner or later someone is going to come along and read this bill and misinterpret it and say that they can kill our buffalo when they wander off a property."

She notes obvious experience in ranching in the area. "Trespassing has always been an issue—on reservation and off reservation—and it will continue to be one." She says non-Indian horses and cattle are known to trespass on the reservation.

She explains, "I was a cattle rancher, and I had cattle that ran in my area and common courtesy is, I call the owner and ask them to take their cattle. But the way the bill is—the way I read it is—if they want to shoot the buffalo, they can do that."

"I think the tribes have worked a long time diligently to develop good relationships with the state," she says. "And I think this is just another way of harming those relationships."

This is a bad, controversial bill, Brockie says, and encourages her colleagues to vote red.

The Chair calls on Representative Ted Washburn. Washburn represents a trio of ranching communities surrounding Bozeman: Three Forks, Manhattan, and Belgrade. He is a retired law enforcement offi-

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cer from White Plains, New York, serving his third term in the House. He is a broad-shouldered, heavy-set man in his late sixties with a steady voice. He looks at the yellow bill draft as he speaks to the issue.

"Bison are a controversy," Washburn says, noting that two sides have been continuously fighting over the issue.

He references the bill draft held up before him, "What I see here is a chance for the landowner to take some kind of action with a bison and I'm sure most of the landowners, the last thing they want to do is put a couple tons of bison meat on the ground."

"They will do everything to herd them, drive them off, haze them," he continues, "And I think this is a good bill. Go green." Washburn replaces his microphone and sits.

The Chair recognizes Representative Carolyn Pease-Lopez from Billings, near the Crow Reservation.

She begins in her quiet yet forceful tone, "The State of Montana boasts over 55 million acres of privately-owned land. That's over half the state."

She clears her throat and continues in an even clearer voice that echoes in the chamber. "To grant the owners of that much liberty to kill any buffalo on their property without any research of supporting data would be reckless and in opposition to everything the state, federal and tribes have worked toward for the past twenty-five years."

She begins to note court case decisions when she stops and looks around at her fellow lawmakers.

"Let's back up," she says. "This bill is a state-endorsed wholesale slaughter of bison as we saw in our not-so-wonderful history. It licenses private landowners to shoot any and all bison found on their property at any time of the year and for any reason, regardless of the risks posed by such animals."

She returns to the subject of court cases on the issue. "The Montana Supreme Court has held that Montana is one of the few areas in the nation where wild game abounds, and it regards this as one of the greatest of the state's natural resources, as well as the chief attraction for visitors."

Pease-Lopez explains that she supports coordinated efforts to manage bison as wildlife and reduce the prevalence of brucellosis while at the same time maintaining wild, free ranging bison.

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"I do not support efforts that result in unrestricted taking of bison and disregard the tribes as partners, sovereign nations, and a people with a continuing cultural connection to these animals," she clarifies before resting her case.

Sponsor Alan Doane indicates his desire to make a closing statement after discussion on the floor is concluded.

"I'd just like to point out that this is not that tough of a bill," Doane says, his voice rounding to a characteristic high-pitched squeak.

"This don't take that much discussion on this thing," he says. "All's this does is close a loophole. It just gives agriculture a last resort to protect our private property. This is not the first resort, this is the last resort we might be left with."

Doane continues, "As far as some of the discussion about wasting an animal or something like that, I don't know a rancher that wastes anything. We don't even waste bailer twine. We're pretty conservative by nature. Nothing is going to be wasted here."

His voice rises in pitch for the last time. "This is a pretty simple bill, and I just appreciate agreeing. Thank you."

The Clerk Records the Vote: 62 Aye, 38 Nay. Bill passes. *Laws should be revised to allow private property owners to shoot roaming wild bison on sight.*

Bill later dies in the House Appropriations Committee.

Chapter 6: Dark Money in the House

Montana's history of corporate political control stretches back over one hundred years to a time when dollars from the state's largest copper mining businesses dominated the political stage. Legislative votes were often for sale and the code of law often reflected the interests of profits over those of the people.

In modern times and under the current code of law, Montana's campaign finance regulations are fairly strict. Individual campaign donations in the state are limited. In a state legislative race, candidates may only accept \$170 from an individual, \$850 from a political party and \$170 from a Political Action Committee. Corporations are barred from contributing directly to a candidate.

State House representatives raise an average of \$12,000 each to win a race, a modest figure considering the millions spent by those running for statewide or federal offices.

Political Action Committees, or PACs, may collect unlimited donations and often work to influence elections by sending attack flyers supporting one candidate over another. These non-profit groups are not required to disclose their donors, corporate or otherwise, as long as they operate in an educational manner. They may present information in advertising, letters to the editor in newspapers, or in mailed material attacking a candidate or supporting one candidate over another. PACs are not required to disclose donors.

Under law, PACs are only supposed to operate for educational purposes, using the power of media to influence elections by informing the voter. A major debate currently exists regarding whether many such activities constitute free speech or electioneering.

PACs exist in both political parties, but conservative PACs work in Montana to place primarily Tea Party or far-right Republican candidates in state races.

Key Republican PAC contributors in Montana are known to include Plum Creek Timber Company, Burlington Northern Railroad, Montana Coal Council, Montana Wood Products Association, and the Montana Contractor's Association. Democrat-supported PACs include Montana Conservation Voters and the Treasure State PAC, an organization linked to U.S. Senator Jon Tester.

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In the notable U.S. Supreme Court case of Citizens United v. the Federal Election Committee in 2010, the court ruled that an on-demand showing of "Hillary: The Movie" about political candidate Hillary Clinton was not political propaganda or "electioneering communication," ruling that First Amendment protection of freedom of speech extended to corporations.

While upholding the federal ban on direct contributions from corporations and unions to campaigns or political parties, the decision allowed unlimited and anonymous contributions to PACs, who could then spend unlimited amounts on the influence of media advertising in the political arena.

In Montana, campaign finance law has become an issue of state's rights. The state produced the Corrupt Practices Act in 1912 in response to the age of copper barons and corporate control that bought elections and legislators. The law states, "a corporation may not make . . . an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party."

In 2010, a state district judge ruled that Montana's campaign finance laws were unconstitutional, stating that Citizen's United required a new interpretation of the old state law.

Lawyers for the Western Tradition Partnership (WTP), a PAC and conservative advocacy group that targeted "environmental extremism," argued that Citizens United applied to Montana State law, taking their case to the Montana Supreme Court.

In 2011, the Montana Supreme Court issued a majority opinion upholding the Corrupt Practices Act based largely on historical context. Writing that prior to this law the government was in danger of being under corporate power, the court also cited extensive evidence to establish the correlation between expenditures and political corruption.

In 2012, the U. S. Supreme Court concluded that Citizens United supersedes Montana campaign finance law. Four justices dissented, noting, "[m]any corporate independent expenditures . . . had become essentially interchangeable with direct contributions in their capacity to generate quid pro quo arrangements."

Although PACs and other organizations may work to influence an election, coordinating with a candidate directly is still a federal offense.

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In the past few years, few PACs have been charged with violating the law and coordinating directly with candidates. Among these is the aforementioned Western Tradition Partnership, whose donors were revealed through the discovery of a slew of documents seized in an unrelated criminal incident in 2012.

Lawyers for WTP deny any illegal coordination with candidates and maintain that limits on campaign spending are limits on free speech. Montana's Commissioner of Political Practices Jonathan Motl filed complaints against these and other groups ruling otherwise in the spring of 2014, indicating that WTP broke the law by coordinating mailers with the consent or knowledge of candidates.

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The Helena Civic Television Service (HCTV), the broadcaster of all legislative meetings and floor sessions, recorded and broadcast a non-partisan conference in Helena on campaign finance during the 2013 interim session. The conference was a one-day event featuring panels of lawmakers, lawyers and political scientists and was hosted by the Burton K. Wheeler Center for Public Policy.

At the event, Governor Steve Bullock (D-Montana) says unlimited campaign spending by PACs "unquestionably buys those who can afford it more influence than not. These non-profits are spending money and we don't even know who is giving the money.

"Consumers need to know who is making expenditures," Bullock continues, "Equating money with speech causes serious problems in our democracy."

Democratic Governor Bullock is the former state Attorney General, the named defendant in the lawsuits brought in the U.S. Supreme Court to challenge campaign finance laws in the state. He says transparency, disclosure, and accountability are the only ways to rebuild faith in the system.

Second-term Senator Bruce Tutvedt (R-Kalispell) attends the same Helena conference as a panelist and his remarks shed considerable light on how candidates are elected in Montana and on the sometimes seamy link between campaign donations and legislative

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lobbying. The senator tells a tale that is common to many moderate and even traditionally conservative Republican legislators who have been targeted and bullied by dark money forces.

Senator Tutvedt is a wheat and alfalfa farmer from the Flathead Valley near Glacier National Park. He was appointed by President George W. Bush in 2001 to chair the Montana Farm Services agency and by Republican Montana Governor Judy Martz to serve on the Wolf Advisory Committee. In his second term as senator in 2013, he was elected by his peers to serve as Senate President Pro-Tem. He is a plain-spoken father of three grown daughters who has an imposing physical presence but a thoughtful and gentle gaze.

"I think we in Montana are kind of having a Pollyanna dream about how elections in Montana are determined," he addresses the crowd while standing at a podium onstage. About seventy-five attendees are present at the Wheeler Center event.

Senator Tutvedt is nostalgic about running a campaign before the advent of the dark money influence. "Raising money at \$170 a clip, going to meetings, meeting local citizens, [candidates] telling [citizens] their vision for Montana." Tutvedt recalls, "I ran one of those in 2008 and I have to tell you, it was kind of fun. After Citizens United we have a different world.

"Let me tell you about the real story after dark money," he explains. "Dark money believes that your vote is for sale. They have shown that your vote is for sale."

Senator Tutvedt says groups like WTP or their subsidiary American Tradition Partnership brag about the fact that they can "buy your vote in a primary."

These organizations "put in a little money and diminish a candidate's reputation," he says. Out of fourteen targeted races in the last election cycle, Tutvedt says he was one of two candidates who managed to win regardless of the attacks.

"Dark money is a very powerful tool. Dark money is powerful and success is going to breed more," he emphasizes, continuing, "We are in an escalating war. The only way it maybe isn't is if one of the big guys makes the front page of the newspaper for indiscretions."

Tutvedt also focuses on the extremist groups supported by dark money, referencing surveys that potential legislators receive that encourage responses far to the right of most issues on the Republican

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party platform: gun control, for example.

He explains this presents a bar in efforts to recruit new Republican candidates. "We're not getting 'No, I don't want to run' or 'I'll run in a little while,' we're getting 'Hell, no!'" He says potential candidates do not want to be aligned with the many dark money-supported extremist groups pushing agendas across the state.

Tutvedt explains it's not as easy "to go out and find great candidates that want to go for ninety days or four months every other year and sit in the legislature," when the obstacles to getting there will be personal and professional attacks from individuals and organizations supposedly aligned with their own party.

"Current legislators are cowering," he says, indicating that many in his party are forced to vote along extremist lines or face a primary opponent in the next election cycle.

"It's affecting the legislature," Tutvedt stresses. "Dark money wants to own your legislature."

Tutvedt is animated. He gesticulates with his arms and emphasizes points by shaking his head and ruffling the hair at the back of his head. He appears to be releasing a burden.

"I was taken into a room with an attorney for a couple of the richest men in Montana," Tutvedt recalls, as if sharing an unbelievable secret. "We were talking about the bill they wanted." He tells the attorney that he won't vote for a bill until he reads it first.

There was no interest in this sentiment, Tutvedt explains, and the attorney only responds to him with, "'No! Are you with us?'"

"I'm like, 'No! I've got to know what's in the bill!' And they say 'Are you with us?'"

A look of disbelief crosses the farmer-legislator's face. He stands at the podium shaking his head incredulously while relating the story.

"They're the ones that run the dark money. They're the ones you read about," he says.

"Well, I said no."

Tutvedt is the Chairman of the Senate Tax Committee. He goes on to relate a story about a one million dollar tax cut for a corporation, a bill that came in late in the session to his committee. He says he held the bill up in committee and blocked its passage.

"I got lots of phone calls, 'Oh, God, this company gives contributions' [and] 'You can't believe what we can get out of this. You need

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to pass that," he says, explaining the pressure he felt from his colleagues.

"I go, 'I don't do things for campaign contributions.' So I held it up and it died and it missed transmittal," which for the time killed the one million dollar tax cut for the company, Tutvedt says.

"You know what happened? The governor [Brian Schweitzer (D-Montana 2005-2013)] brought it back, mandatory vetoes that bill in the back door. He knows what campaign contributions are," he says, adding that the bill was brought by Senator Jason Priest (R-Red Lodge), a lawmaker who is known for his affiliation with the Montana Growth Network. "The king of the dark money," he adds.

"Then there was the million dollar tax credit for individuals on school choice," Tutvedt says and continues, "No, I don't give away large tax credits, so that died in my committee."

Tutvedt says his actions, "got me some calls from some very rich individuals." He traces a pattern of decisions made to deny dark money influence which have hurt him and other legislators in their campaigning.

"How would you have done if they had put \$300,000 or \$500,000 as the offer for that one million dollar tax cut?" he asks, hinting that perhaps an effort had been made to bribe him.

"This is real," he says, "The war out here is real, folks. We're not just talking some political thing. This is the Montana Legislature.

"This is the Tax Chairman of your Montana Legislature," he refers to himself, "This is what the pressure is sometimes when we say no. How did killing these two big tax cuts help Senator Tutvedt?"

He shakes his head again and gazes out to the crowd with the same surprised expression of disbelief.

"Well, I was the recipient of the largest dark money attack ever put on for the Montana Legislature," he says of his 2012 primary campaign, "I mean, it was intense." He mentions one radio ad that insinuated he was "teaching kids sexual positions."

"It is a demeaning thing," he admits. "My 22-year-old daughter, I suggested she should run for politics. She said, 'Dad, I'll never do that after what they put you through.'"

Tutvedt describes overwhelming advertising attacks and mailers from dark money groups in his targeted campaign. "This is real and it comes in droves. Every day there's another mailer: 'You took too

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much from the government,' 'You are for Obamacare,' 'Whatever sex position you're on that day.' It is real and it is dirty.

"There's an on-the-ground effort that's going to affect your legislature and if we don't get a handle on it we're going to go to D.C. gridlock [in the Montana Legislature]," he says. "We're going to be like Kansas where they have an unsustainable budget, they've cut their schools, they've cut their universities."

He assures the audience that it is worth the fight, adding, "It's going to take the voter and it's going to take a lot of work."

Most Montana voters are not meticulously informed about the dilemmas and difficulties faced by lawmakers in the State House and Senate chambers. Tutvedt's presentation comes across perhaps as panicked at times, as if he fears himself a dying breed of lawmaker whose attempts to curb the influence of corporations and other interest groups in state government will fail. He concludes his presentation, shrugs his shoulders and cedes the floor to another panelist before taking his seat.

Unlimited PAC Funds in Campaigns

House Bill 265

The House and Senate chambers are full of lawmakers with agendas. As women's rights and environmental activists stand on the floor promoting legislation on pet subjects, so do advocates for corporations, or "dark money" groups.

Representatives with any kind of agenda make sure to request a number of bill drafts with bill titles indicating their particular issues of concern. Each representative is allowed a limited number of priority bill drafts, but can request extra drafts to ensure no shortage of opportunities for legislation if needed.

The bill draft list of Representative Scott Reichner (R-Bigfork) is an example of how a legislator with an agenda might operate. His bent is far-right conservative Republican and he frequently brings legislation that is potentially beneficial to corporate entities. Most of

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Reichner's bills are patterned on model legislation crafted by the American Legislative Exchange Council, or ALEC, an organization funded by conservatives and large corporations to influence legislation, especially at the state level.

Representative Reichner has a list of bill drafts proposed at the start of session. This list includes a few dozen bills requested but never used. Among these bills are a number referring to elections, voting, and campaign finance reform. A few of Reichner's bills are written and presented in the session to committees where they pass on a party-line vote.

On the House floor in the 2013 regular session, Representative Reichner has an idea to address the issue of campaign finance in the Montana Legislature.

Reichner is a cavalier lawmaker who struts unassumingly, giving an air of vast comprehension and wisdom without effort. He studied finance at Brigham Young University and owns a mortgage company near Flathead Lake. He has a large and attractive family of ten children who often visit him in session, sometimes all sitting quietly on a long bench behind his desk.

"We need finance reform," he opens his argument on the floor. "We need campaign finance reform. Since the Supreme Court decision in Citizens United and in other cases, there is a tremendous disparity between the campaigns and the PACs.

"I'll give you an example," he says. "Case in point: in the last election for the governors of both campaigns, both governors raised—and this isn't accurate—but let's say a million dollars. The PACs raised somewhere in the six to eight million dollar range because of the case of Citizens United and others."

Reichner continues on the floor, explaining, "So money is flowing into the PACs. And what happens is that the campaigns unfortunately can't control their messaging."

There is a long, quiet pause in the chamber.

"The money that flows into the PACs, a lot of that is what they call dark money." Reichner breaks the silence. "It's not money that is traceable, it's not money—we don't know who the contributors are in some cases." Reichner takes his time during his opening argument and there is another long pause.

Slowly, he asks the body, "How do you alleviate that?"

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"What we do in this is," he explains, "We do two things. First, we expand the contribution amounts to all the candidates."

Reichner admits that he has simply copied federal guidelines to craft the increases to donation limits. The current limit for donations to the governor's race is \$630. Reichner "bumped that up to \$2,500.

"Where do I get that number?" he asks, explaining, "Those are federal guidelines. That's how much you can give to the president, that's how much you can give senators and congressmen. And I just took an average of what the other states were, around us. For the other statewide offices, I went to \$1,000 and for the legislative races I went to \$500."

For a frame of reference, such a proposed increase would make a state legislator's race jump in cost from one where a candidate must raise \$12,000 to one where they would need to raise around \$25,000 or more to be competitive.

Reichner addresses further unlimited contributions as he continues.

"The second thing that this does is it allows unlimited contributions from the state party, because," he says, "that's how many states do it. It's traceable; it's trackable. We know who contributes to the state party. We know what that entity does.

"The committee in their wisdom have changed a few things," he says, referring to many cross-outs and strike-throughs in the bill text. He indicates that they have eliminated any union or corporation donations from the bill as well.

He presents his third point casually, saying, "I opened up the PAC contributions. PAC contributions in an aggregate in this bill are eliminated." The bill text indicates that PACs, or political action committees which can raise unlimited money from unlimited sources may give an unlimited amount to candidates.

"So," Reichner looks at the assembly with a vague enthusiasm, assured of a pass for his bill, "I look for a vigorous debate."

"There's a lot of opinions about this," he concludes, "I don't know that there's any one right answer, but this is a start."

The Chair of the House for the day calls on Representative Bryce Bennett (D-Missoula). Bennett has been outspoken on campaign finance reform and voters' rights issues throughout the session.

"I stand in strong opposition to this bill," Bennett says with agita-

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tion and nerves apparent in his voice. "I think it sets a really bad precedent and is exactly what our constituents have told us that they don't want."

He is furious with sarcasm as he chides the sponsor, "I can't tell you if I knocked on one door last time where they said, 'You know what we need? More money in politics! That's exactly what will make everything better, because more ads are going to make things better, more mail at our doors, more people hired to try to harass us with phone calls and door knocks.'

"That's what this bill is all about," he says, taking a brief pause. "This bill is not really a fix with dark money. It just says, 'Hey, dark money, you can do exactly what you did before, and by the way, over on this side, we're just going to put more money over here, too.

"Money fighting money is not the answer to too much money in politics," Bennett says.

"This is about fueling money into our PACs and into our parties," he continues. "That means that not only are your individual limits going up where more and more people can buy out large amounts of contributions for our candidates. It also means that people can start putting more and more money into our parties. We saw that last time where people wanted to funnel \$500,000 or more into different people's campaigns through putting it through parties.

"This is just more money into politics," he shakes his head and chides the sponsor again. "This is more money through PACs, which I don't know that any one of our constituents is saying 'Yeah, that's a great idea. Let's have our candidates accepting more PAC money from organizations who don't have to disclose who their donors are.'

"This is a problem," Bennett says, launching into a true oration. "Campaign finance is something we have to deal with in this legislature. We have to deal with dark money, we have to deal with the many problems that are associated with the issues that we're seeing across the state, with people not disclosing who is behind what they are doing, with people sending out mailers that are attacking people and not putting their name on it; that's an issue. The issue is not that our campaign limits are too low. The issue is not that we don't have enough PAC money coming from undisclosed donors into our campaigns. The issue is not that we do not have enough money funneling through the party." Bennett pauses and looks around the room.

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"This is a bad bill," he says. "This is a bill that tells folks that money is the answer to all of our problems. I've got to tell you that that's absolutely not the truth. This makes the problem substantially worse." He encourages the body to vote against the bill and sits again at his desk.

No other representatives wish to speak so the Chair calls on Representative Reichner. He stands to close on his argument for the bill.

"Folks, this is—" he says and pauses to laugh aloud, "The Supreme Court's ruled this is our First Amendment right. So whether you like money in campaign finance or not, this is going to continue to happen.

"The governor just recently has teamed up with Senator [Jim] Petersen [(R-Buffalo)] in the senate and they've agreed to ninety percent of this bill," he explains. "They've agreed to expanding the PAC aggregate amounts, they've agreed to expanding their limits. Take a look at the bill, that's all you have to do." Reichner refers to a bill brought as a bipartisan effort at campaign reform, legislation which ends up dying in a senate committee and failing a blast motion on the senate floor.

"This just goes a step further," Reichner adds.

"And, what I, my contention is—," he pauses and stops to clear his throat before continuing. "The money—people want to donate to the campaigns but unfortunately they're limited. In the State of Montana, we're limited."

"You can only give \$630," he explains. "Many people want to give more than that and so they're forced to go through these non-traceable entities."

Reichner says that this bill will open the door for these people to give money in an above-board and legal manner to campaigns.

He argues that the bill makes campaign donation dollars trackable and traceable. "We know who these folks are," he says, "You can go down and find out who they are because it's going to the state party and other ways. It's going to the campaign."

He closes humbly, "This is my impression of what needs to be changed. I don't know if there is a perfect solution but I appreciate a do pass."

House Bill 229: The Clerk Records the Vote: 58 Aye, 42 Nay.

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Bill passes. *Law is revised to reflect amendments on campaign contributions to include increased individual limits, unlimited contributions from political parties and to make aggregate donation limits from Political Action Committees unlimited.*

Bill later dies in Senate Judiciary Committee.

Chapter 7: Medicaid Expansion

Senate Bill 395

Of all the blast motions heard on the floor in the 2013 session, the one which addressed Medicaid expansion was among the issues most debated and discussed among lawmakers and their constituents outside the chamber walls. Bills on Medicaid expansion dealt with accepting federal funds to help ease the transition in the state when a new national health care plan would be instituted as a federal law in 2014.

The issue is tremendously complex and contentious and involves enough back-story to fill an entire book. At its heart is the issue of the Patient Protection and Affordable Care Act or "ObamaCare."

The Emergency Medical Treatment and Labor Act, passed by the U.S. Congress in 1986, requires hospitals to provide emergency health care treatment to anyone needing it, regardless of citizenship, legal status, or ability to pay. There have never been any reimbursement provisions in this law. In other words, participating hospitals cannot deny urgent medical assistance regardless of someone's insurance status and they must absorb this cost in some manner.

According to the Centers for Medicare & Medicaid Services, 55 percent of U.S. emergency care now goes uncompensated. When medical bills go unpaid, health care providers must either shift the costs to those who can pay or go uncompensated.

In the first decade after the Emergency Treatment Act of 1986, such cost-shifting amounted to a hidden tax levied by providers. The New America Foundation estimated that this cost shifting amounted to \$455 per individual or \$1,186 per family in the state of California each year.

Hospitals are often less able to shift costs, and end up writing off millions of dollars in uncompensated care. The amount of uncompensated care delivered by nonfederal community hospitals grew from \$6.1 billion in 1983 to \$40.7 billion in 2004, according to a 2004 report from the Kaiser Commission on Medicaid and the uninsured.

Costs for health care and insurance continue to be driven higher

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by the expanding costs of providing essential and non-essential care to uninsured citizens. Citizens and businesses who have carried health insurance for themselves or employees have experienced jumps in premiums directly related to the costs of health care for the uninsured.

Over the past twenty years, the issue of expanding health care to all Americans while keeping medical costs and fees in check has been a hotly contested topic with many solutions offered, from single payer systems to health insurance savings accounts.

As of January 1, 2014 under the Affordable Care Act, the federal government is to make funds available for states to expand their Medicaid programs to those with incomes below 138 % of the Federal Poverty Level, which translates to those making roughly \$16,000 a year for an individual or \$27,000 for a family of three.

With the Affordable Care Act, Congress and the executive branch have admittedly attempted to address the rising costs of premiums for insured citizens while making sure the most vulnerable members of the population have access to medical care. While many organizations, groups, and individuals have attempted to address the problem of rising costs of health care over the past thirty years, the Affordable Care Act represents the first time such attempts have been put into the code of law for states across the nation.

After the three-year transition period, individuals across the country will be required to carry health insurance or have the cost of such insurance deducted from a tax refund after filing federal income tax returns. Most Americans must obtain health coverage by 2014, get an exemption, or pay a per-month fee. The Internal Revenue Service cannot enforce this provision with jail time, liens, or any other typical methods of collection. About 75 percent of Americans received income tax refunds in 2012 and many who aren't owed a refund would be exempt from the tax.

The federal legislation offers a number of new benefits, rights, and protections, including provisions that let young adults stay on their parents' insurance plan until age 26, stop insurance companies from dropping individuals when they are sick or if a mistake is made on an application, prevent against gender discrimination, stop insurance companies from making unjustified rate hikes, do away with lifetime and annual limits, and give individuals the right to a rapid appeal of insurance company decisions. The plan, when enacted, ex-

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pands coverage to tens of millions of people, subsidizes health insurance costs, and requires all insurers to cover people with pre-existing conditions, among other things.

The plan also includes new taxes. Most new taxes are on high-earners, large businesses, and the health care industry. There are also tax credits included in the plan to subsidize costs for low- to middle-income Americans and small businesses.

Starting in 2014, there is also an employer mandate for large employers to provide health insurance to full-time employees by 2016, an individual mandate for individuals and families to obtain health insurance by 2014, and new limits to medical deductions.

Many legislators are widely opposed to the tenets of ObamaCare, arguing that the employer mandate to carry coverage will reduce job and wage growth. According to opponents of ObamaCare, millions of workers across the country will be reduced to part-time work of 29 hours a week or fewer because the definition of a full-time worker in the ObamaCare legislation is 30 hours a week or more.

The various arguments presented by both sides have been ineffective for the most part in crafting compromise on the issue. In Montana, Republicans have held that requirements of the plan are unfair and costly, and that taking money from the federal government to help enact the plan is irresponsible when the national debt is currently topping \$17 trillion dollars, regardless of the long-term savings on national health and social programs.

Republicans have urged that Montanans reject the Affordable Care Act and have undermined many attempts to implement it, including targeting individual provisions and withholding funding. Democrats have worked equally hard to encourage implementation. Notably in the 2013 session, House Minority Leader Chuck Hunter attempted to blast a Senate bill on Medicaid expansion which cleared the Senate floor but died in the House Health and Human Services Committee.

The bill to address Medicaid expansion in Montana, Senate Bill 395, outlines a road map for implementing the Affordable Care Act in the state. When the bill fails in the House Health and Human Services Committee on the eightieth day of a 90-day session, Senator David Wanzenried (D-Missoula) has Minority Leader Chuck Hunter (D-Helena) blast the bill to the House floor.

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It is common to have lobbyists aligned with one side or another in a contested issue. In the lead up to the session where the Medicaid blast was to happen, the lobbyists for just this once were one united voice: all agreed the State House should pass Medicaid expansion.

During a daily session, a bill blast is a highly unusual activity on the floor. The only discussion held is to decide whether the bill will be heard by the entire body or not.

A limit of four representatives are allowed to speak to the issue without any other open debate. Two of the members--the sponsor and a proponent--are charged with convincing the entire body, through a monologue, to give the legislation a chance to be discussed further on the floor by the entire body. The two other speakers have the opposite goal.

Due to the nature of the motion, the discussion is presented below largely as continuous statements from each representative speaking. Each individual is given ample time to speak to his or her point and aside from brief introductions, their words are produced uninterrupted.

Minority Leader Chuck Hunter is a natural to carry the legislation for the Democrats.

He is individually outspoken on the issue of Medicaid expansion and counts it as part of his platform in his campaign literature. He notes his priorities in the legislature include "expanding and reforming the Medicaid program to improve access to care, to make health care more affordable for all Montanans, reduce the number of uninsured Montanans, and work to more closely integrate mental health care with physical health care and support Montana's public health system in preventing disease, promoting health, and saving health care dollars."

Hunter grew up in the capital city of Helena and has served three terms in the Montana State House representing his home district. He is retired after 22 years in state government running a variety of programs including Medicaid, the Healthy Montana Kids program, unemployment insurance, human rights, and Workers' Compensation.

Hunter is a thoughtful man who does not tend to speak on the floor without obvious consideration of the subject. Although he is fairly slight in stature, he is a forceful presence in the House, always communicating clearly and passionately to fellow lawmakers his per-

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spective on many of the most contested issues during session. Beneath the gravity of his demeanor, Hunter also possesses a light-hearted spirit common in the House which commands and encourages respect on both sides of the aisle.

He appears each day in a nondescript professional suit, a consistent haircut and a good-natured gaze peering from behind the simple frame of his glasses.

Hunter rises first to make the blast motion at the end of a day of legislative business. As he is making a motion outside the regular reading of bills, he is recognized by Speaker of the House Mark Bladell (R-Somers) rather than the Chair of the Day. In a blast motion, the argument will be heard outside of the regular reading of bills. If Hunter is successful, the issue will be debated by the Committee of the Whole, or all one hundred representatives in the House. If he is unsuccessful, no further discussion will be held.

"Thank you Mr. Speaker," Hunter says. "I would move to withdraw Senate Bill 395 from the House Health and Human Services Committee and place it on second reading on April 17, the eighty-first legislative day," Hunter begins.

The Speaker acknowledges Representative Hunter's request.

Hunter continues, addressing the body but directly speaking to the Republican side of the aisle. He addresses an issue hotly contested and debated across the state. In 80 days of legislation, the issue has yet to appear in a discussion on the House floor.

Mr. Speaker, members of the body. No surprise this motion is here today. I think you've talked about it. We've certainly talked about it. I think it's an important moment here in the session today. I think it's a defining moment in the body on this issue today. And I think it's going to define who we are as a session. I think it's going to define how we are judged as a legislature this session. I think it's going to define how we are remembered for this legislative session and it's perhaps our final opportunity to get to a real debate on the expansion of our health care system, our Medicaid system.

I think it's our final opportunity perhaps to have a real discussion about how we can significantly affect the health of Montana citizens, our final chance perhaps to talk about how

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we can significantly improve our economy and create a lot of jobs in our state and begin reforming our health care systems.

Senate Bill 395, as you know, is the expansion bill by Senator Wanzenried. Again, it's a Medicaid expansion bill along with a host of reforms. That's the way the bill came to the House. But that is not the way the bill was proposed last night [in committee] and not the proposal in the Human Services Committee. It was a much different proposal, a much different approach that was described yesterday, and I think this body needs to hear about that approach and have a chance to respond to it.

The approach which was presented last night was an approach that frankly contained things that I've heard folks on your side of the aisle talk about wanting in an expansion proposal. Many of the things that you have said were wrong with original proposals have now come into the discussion here via amendments. And those amendments, after Senator Wanzenried opened last night, were presented by Senator Buttrey [(R-Great Falls)]...it was a bipartisan approach to create a market-based pilot for the health insurance expansion.

Let me tell you about those amendments and what they do, in broad strokes. In the Buttrey amendments, the health care expansion would be a market-driven expansion done under a waiver for the period of 2014 through 2017, a three-year pilot.

It's based on the "Arkansas Model" or the Arkansas solution [model legislation in Arkansas conceived by Republican lawmakers and passed by the Democratic governor of the state, which allows for Medicaid participants to enter the state exchanges to purchase insurance with subsidies]. Many of you have heard about that over the last couple of months and here are the main features. We'd use Medicaid funds to purchase insurance coverage in the private market for individuals. It would promote individually-owned health insurance. It would specify eligibility requirements that the program be limited to those who are currently employed or actively seeking employment. There is an employment connection there that many of you have been seeking all along.

There's a provider stake in the amendments. It provides for

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an increased hospital bed tax to be set aside for the match requirements downstream, and it also collects funding from those areas where the state would save money, through individuals having insurance on the private marketplace, and there are many of those. That money as well would go into a state special revenue account to provide for match downstream should the state choose, post-2017, to move in that direction.

The program has many reforms. It has the medical home that we've talked about in several bills, plans to reduce emergency room visitation, value-based purchasing, and a host of others. It has an oversight board to monitor those reforms and to see how they are doing over time with the ability to kind of check and see where we are going with the program and make recommendations for follow-up and change.

It has a circuit breaker, and not just a circuit breaker downstream, it has a circuit break[er] at any point if there is not follow through on the amount of match it would provide and it terms out June 30 of 2017.

Now, those amendments make this bill, in my view, a bill that really has a lot of bipartisan ideas and a lot of capturing of the things that this side of the aisle has said they want in a bill. I support those amendments. I will work to get those amendments in the bill if it's on the floor. But we have to have the bill here.

We haven't had the discussion here. The discussion has been limited to a committee. That committee has yet to pass a [Medicaid expansion] bill out and I think there are a majority of folks in this chamber who would like to see a health care expansion bill not only discussed but passed.

Minority Leader Hunter concludes his argument and the floor opens to limited discussion of the blast motion, allowing only two opponents and one further proponent to respond.

Speaker Blasdel calls on Representative Kelly Flynn (R-Townsend). Flynn is a life-long Montana resident, former teacher and current owner and operator of the Hidden Hollow Hideaway Cattle and Guest Ranch south of Helena near Canyon Ferry Lake.

Flynn usually sports a cowboy hat and a western-styled suit. He is

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a traditional Montana conservative Republican whose previous campaigns have been the target of "dark money" and extreme Tea Party attack ads. He speaks for his party.

Mr. Chair, members of the committee, I rise against the motion. And first of all, I would like everybody in the body to know that this bill comes without any amendments. Today, we have to measure the bill on the merits before you.

I rise against it for four reasons and I'm going to go through each of those reasons. First of all, the information I'm going to pull out comes from a study from the University of Montana and it talks about how many dollars we as Montanans will have to pay for Medicaid expansion. I'm quoting right off Table 10. In the beginning, in the first three years, it starts out relatively inexpensively: \$13,651,000. Then it goes up to \$26 million dollars. Then it goes up to \$28 million dollars. In 2017, it's up to \$50 million dollars. Then it goes to \$81 million. Then it goes to \$97 million. Then it goes to \$129 million and finally, in 2021, for us and Montanans, it's \$152 million.

Yesterday on this floor I voted for Senate Bill 175 [to generally revise public education funding] because I prioritize spending. I voted for that bill. Today, let me just give you an idea of what that will mean down the line. When we go over to 2015, that biennium, the total increase in the revenue estimate [is] \$143 million for the biennium.

If we implement Medicaid expansion in one year we will be spending twice as much, twice as much. We have to look at the dollars. And some folks have said, well, it's the jobs. It's the jobs that we bring in. And I looked at the statistics and the statistics came again from the bureau and at the hearing last night I found something that was really striking and I think everybody in this body should know about it.

Park County had a hospital official came in, said that in his county where there's 15,849 residents they provided 300 jobs. So let's just double that amount of jobs to 600 just because we can. That's one for every 25. Under Medicaid expansion, the jobs will be, that they're saying, will be one job for every five

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people.

The final thing that I'd like to say—that is a really good thing about it is—I think we have the dollars in Montana to do something to help people. And do it with Montana dollars by supporting House Bill 623 [a Republican-sponsored health care expansion bill that dies later that week in committee] with reforms, and some of the ideas of Senator Wanzenried are good ideas and they should go there and I think we should take some of those ideas and put folks on the exchange, but remember: the dollar cost is staggering.

Representative Flynn finishes discussing his perspective and the Speaker calls on Representative Pat Noonan (D-Butte). He is a third-term legislator who works full-time coordinating employment for adults and children with special needs through the AWARE program.

He is a native Butte Democrat of considerable size, a ruddy complexion, and a robust sense of humor that mirrors an earnest professionalism on the floor. He is known for bipartisan work on many issues but is definitely on one side of the aisle for the discussion on Medicaid expansion. He reinforces colleague Hunter's perspective.

Mr. Speaker, the members of this body, I have to admit that I've really struggled with what I was going to say today. I've rose on several other occasions on this same issue and I've tried to appeal on many different levels so it really took me a while to decide what I would really talk about. Because I've already stood, as many others, and talked about extending health care to 70,000 working poor Montanans. We've already talked about the creation of thousands of jobs across Montana and all of our communities. We've already talked about bringing millions of dollars of our federal taxpayer money back to our communities, back to all the communities that we represent.

We've already talked about the millions of dollars that our local hospitals have spent towards expanding Medicaid and they will continue to spend whether they are expanding Montana's Medicaid or New Jersey's.

So I'm at a loss. And Mr. Speaker, I'm frustrated. And I've

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had many discussions with several legislators in both bodies over the past eighty days and beyond. And I know that most of the people I've talked to—from both sides of the aisle—they're worried about the working poor. They're worried about the uninsured. They're worried about the number of jobs in their communities, and they're worried about the viability of their local and rural hospital. That's why I continue to rise. That's why I continue to stand on this issue.

This issue transcends politics. This is an issue and a discussion, like I've said before, we all need to be a part of. But I suspect we are being kept out of this discussion, not because people don't recognize the gravity of the issue, but because of politics.

As our lieutenant governor said, when it comes to this issue, he would ask that we check our partisanship at the door. Like our governor said at our State of the State at the beginning of the session, he said it's time to set our politics aside and I share that sentiment. Because this is not about politics, it's about people.

Please join me, join me in voting green. Please join the discussion and help forge a solution that we can all be satisfied with, not because of politics, but because of the people you represent back home.

Representative Noonan sits and the Speaker calls Republican Steve Fitzpatrick (R-Great Falls) to speak in opposition of the motion.

Fitzpatrick is one of the tallest members of the House. He is a youthful, confident Helena native who attended the University of Montana and finished law school in Arizona. Fitzpatrick is a Tea Party member with a far-right conservative bent. He frequently brings legislation to the floor that is potentially beneficial to corporate entities. Most of Fitzpatrick's bills are patterned on model legislation crafted by the American Legislative Exchange Council, or ALEC, an organization known to be funded by large corporations to influence legislation.

Thank you Mr. Speaker. I do rise somewhat reluctantly as Senator Buttrey and Senator Olsen [both Republican senators

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who support the legislation] are, I think, two wonderful gentlemen and I think they've worked very hard, but I'm going to oppose this bill and this motion.

Now, you've heard Representative Flynn and I think Representative Flynn is correct. The bill that's down in Health and Human Services is an expansion bill and I think everybody on this floor knows there is no guarantee those amendments are going on. And there's no guarantee that what we want today is what is going to come out of this House.

But I want to take a little different tact [sic]. You know, a couple years ago when I was in law school—I went to law school at Arizona State University—and in 2004 they put an initiative on the ballot in that state to expand Medicaid and they moved to expand it up to 100 % of Federal Poverty Level and that initiative passed and the State of Arizona passed Medicaid expansion [Fitzpatrick is likely referring to Proposition 204, which passed in 2000. The Proposition sought to expand eligibility for the Arizona Health Care Cost Containment System (AHCCCS) for persons who were uninsured and had annual incomes less than 100% of the Federal Poverty Level. The proposition dedicated revenues from Arizona's settlement with tobacco companies as the funding source for the expansion of the AHCCCS program. Proposition 101 from the November 2004 General Election requires that any post-2004 initiative or referendum must provide for an increased funding source sufficient to cover the costs of the proposal and that the increased funding cannot be derived from the state general fund].

At the time the people that were promoting Medicaid expansion [said it] would lower the uninsured rate, reduce compensated care costs, decrease the hidden tax on private insurance for uncompensated care, and save about \$30 million in state funds.

Well, they did Medicaid expansion and what happened was actually the opposite. Enrollment tripled, costs skyrocketed, in fact they were four times what was estimated, the uninsured rate actually increased, and a number of people lost insurance. Now I don't think that's what anybody in this

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chamber wants. I don't think you want to do that to the people of Montana and, in fact, every time they've expanded Medicaid—they've actually done it in five other states: Delaware, Utah, Oregon, Michigan and Maine—they've had the same results.

You know, this is really a question about whether we're going to do an experimentation on the state of Montana. We're going to experiment with our health care system. There are other states that are doing this. We have two years; we can see what happens. Medicaid expansion is going to be here today; it's going to be here in two years. We can wait two years to find out what's going to happen.

But I think more importantly, I think a lot of you in this chamber are frustrated with the amount of spending that has been going on in this session, and quite frankly, I think we're out of money. We're already out of structural balance. We've spent more than we've taken in. I just had a bill killed over in Senate Education [Committee]. That one had a fiscal note of \$2.5 million for this year. This bill has a \$6 million fiscal note. If we don't have money for tax sites and we don't have money for some of the other priorities, why do we have money for this?

This isn't free. There's administrative costs and there's a lot. But I think Representative Flynn has hit the key question. The money may be free today but there is a cost tomorrow. And what this is, this reminds me of when I lived in Arizona, it was at the height of the housing boom, people were getting loans like crazy. You would get a teaser rate on your loan but a big balloon payment at the end. And that's what Medicaid expansion is. It's cheap today. It's costly tomorrow. I don't know anybody who invests that way. You go invest and not know what the future exposure at the end of the day is. I don't think so.

Now, I realize there's a lot of people who have concern about health care. I share your concern. We've worked hard in this here chamber here to pass tort reform, to make the cost of health care lower. I don't think this bill is going to do this. We're going to have high costs. I'm not sure about the quality

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of health care. There's a real potential we're going to have people losing insurance in this state.

This is a "no" vote. We have another bill that's coming from Representative Bangerter [(R-Helena)]. That's probably the best bill of the session. If we're going to vote on one bill, that's the bill. Not this bill.

Representative Fitzpatrick replaces his microphone and takes his seat. The speaker calls on Representative Hunter to present the conclusion to his blast motion. He stands quickly and starts without referencing any notes.

Thank you, Mr. Speaker. Let me address a couple of points made by the opposition. It's true. The bill comes to us without amendments. That's the nature of a blast motion. But I can tell you the House Human Services Committee had the opportunity to put the amendments on last night and didn't. They had a chance to do what they did with Representative Bangerter's bill. That bill was stripped out of everything else, a big packet of senate amendments was brought over. It was put on. They stayed late, they got it done, and it came to the floor. That could have been done last night but it wasn't. So that leaves us our opportunity to actually put those amendments on the floor. That's our only procedural option. And it can be done. You folks can vote for it and we can vote for it.

Now, I can guarantee that we on this side of the aisle will support those amendments.

Second, Representative Flynn talked about a \$152 million figure from the university report. That's a good figure. What he neglected to tell you was to tell you about the other net effects. And the conclusion made in that study was when you take into account all the puts and the takes, all the expenditures and savings that come across with the bill, that conclusion was a \$32 million net requirement of expenditure of the state from those years from 2017 to 2022. Net \$32 million for a \$6 billion investment in our state. Now those are pretty good economic odds, and in fact the folks who came from D.A. Davidson to testify on all these Medicaid savings

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bills said that in their analysis there would be no net cost to the state, when you put in all the puts and the takes. And that was their analysis economically, and I think they're pretty good at what they do.

You also heard about the bill that was a better investment of Montana dollars and let me tell you what that bill does. The bill that's being talked about over in the senate, that takes Montana dollars, and we heard that we have Montana dollars to spend from one—not from the other representative who stood up and spoke. But the one that said we have Montana dollars to spend. You know what the dollars will be used for under that bill? Those dollars would be used to buy Montanans up to the level where they could access federal funds.

We would spend millions of dollars, \$50, \$60 million to get those people up to where they could merely access the federal subsidy on the exchange. So we're going to spend a ton of our dollars to get them to where they could use federal dollars. That doesn't make sense to me.

We heard that the bill isn't free—\$6 million price tag. That is true. A \$6 million price tag of state funds to get a billion dollars of economic benefit over the next two years. That is a pretty good investment by any stretch of the imagination and one that I would certainly think we would be foolish to avoid.

So, let me say this: we have a choice. The choice, I think, is pretty simple. We have a bipartisan Montana-made solution for health insurance expansion that could come to this floor that we could have a good dialogue on and we could find a way to vote for.

We will, folks, have expansion, make no mistake about that. I think it's inevitable in the next two years that we will have expansion. We can have it via this body, by exercising our legislative authority and designing a plan that has features that we all like, or we can simply go the citizen's initiative route and that's on the horizon. You know it and we know it. Everybody's talking about it, the organizations are already working on it. So we can have a product that is crafted here that we like and has the kind of controls, sideboards and reforms that we like or we can just have expansion that will

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come.

I think that's a stark choice that faces us and I think you ought to think about that choice. I think we could pass a bill in this chamber that has features that you like, features that we like, features that we can live with and features that, quite frankly, do good for the state of Montana and I think we should exercise our authority as a legislature to make those choices and not simply look the other way and not simply say no.

Senate Bill 395 with the Buttrey amendments is a good bill. It's good for business. It's good for people. It's good for our economy. It's good for veterans, good for providers. I really don't know anybody it's not good for and it deserves its time on this floor.

Representative Hunter takes his seat and the Speaker of the House calls for a vote on the Motion to Blast SB 395 to the House Floor for Discussion.

The Clerk Records the Vote: 49 Aye, 51 Nay. Blast motion fails. *The discussion regarding Medicaid expansion in the State of Montana will not be held on the House floor.*

Chapter 8: A Question of Perspective

House Bill 257

With the overwhelming volume of legislative issues and individual characters present during House sessions, many incidents and personalities are barely alluded to in this volume, even ones who garnered national media attention.

The chair of the House Judiciary Committee was a notable character in committee and on the floor. Representative Krayton Kerns (R-Laurel) made national headlines for defending Pinehaven Christian Children's Ranch, a Christian school in St. Ignatius. The school garnered national attention when news channel CNN did an exposé detailing years of alleged child abuse there from former students.

Representative Ellie Boldman Hill (D-Missoula) brought a bill to regulate the school and others like it and Kerns stonewalled as the chair of the Judiciary Committee, allowing Pinehaven to continue operations unregulated. His reasoning was that any regulation would violate the separation of church and state.

Similar legislation that was tabled in the Judiciary Committee would have addressed homelessness, criminalized leaving children under the age of eight in a car alone, and created a statewide child sexual abuse prevention campaign. Democratic members of the committee referred to it as the "killing committee," as nearly no Democrat-sponsored bills on modern social or judicial issues passed.

Kerns is a notable personality, distinguishing himself during the session with an attitude bordering on arrogance and self-importance as a member of the majority party. He is known for bringing the majority of Second Amendment bills to the House floor, bills which address gun rights in the state. He has a slender, athletic build and stark, angular facial features. He is serving his final term in the House.

Kerns is a rancher, veterinarian and prolific blogger with extreme right-wing views. Typical posts on his blog indicate that society is near collapse due to impacts of the Obama presidency and that we as a state and nation will soon be without power, food or gas due to

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plans to allow free-range bison in selected areas of the state.

Although Kerns appears at most times "above the law," he is actually the lone legislator forced to make a formal apology on the House floor for mistaken facts repeated to the chamber and in committee.

He first gives the dubious testimony in the House Transportation Committee on an innocuous bill written to update bicycle code. Nancy Wilson (D-Missoula) presents the bill to revise laws related to bicycles. The bill language includes references to modern requirements for safety gear and encourages continuity with Department of Motor Vehicle regulations for vehicles to yield five feet of distance while passing a bicycle on a roadway.

Kerns serves on the House Transportation Committee, where he first spins his yarn on a late afternoon during session.

"I will be opposing this bill and I will be telling you why," Kerns says in a choppy sentence. He explains that he has told this tale before in the House Judiciary Committee and is telling it again because, "It seems to fit well in these circumstances."

"There's no one, I think, in this committee, that runs or bikes more than I do," Kerns says, shaking his head and looking around the room at no one in particular. "I'm on the road continually. While I'm in Helena, I'm running at 3 a.m. when there's no cars on the road so I have lots of experience with traffic, lots of experience."

He continues, "I haven't had an injury yet. That could change. I've had some close calls. I won't go into it on the bike but I will mention why I oppose this. And it has to do with the fact that it has been in the driver's manual since '06...and our code hasn't agreed with that.

"So, anybody that's had a driver's license since '06 should have read that you're supposed to be five feet from the bike when you pass them," Kerns explains. He smirks and looks again around the room with a blank gaze that rests on none of his colleagues or committee staff.

He launches into a story of a close call while running in Helena. "On January 8 of this year, just a couple of weeks ago, I'm running north on Montana Avenue at 5:30 a.m. There's no traffic on the road. I'm running facing traffic. I'm wearing reflective gear, head lamp, red flashing light in the back. When I run, the reflection off my flashing lights will turn off park lights, yard lights just from hitting the photo cell."

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Kerns chuckles and then returns to a serious tone, explaining, "I'm running along and a car pulls out on the road and starts coming toward me. I'm running facing traffic. I'm on the shoulder, pretty much right at the white line. Because of the snow buildup, the shoulder is fairly short. There's no sidewalk that part of northern Montana Avenue.

"I'm running along and this car does not move over," he says with disbelief. "They stay right in their lane and they came right past me and just about clipped my elbow as they come past. It was a four-door sedan.

"Thirty seconds to a minute later, another car pulls out on the road," Kerns says, "and from a distance of about two hundred yards you can see that they spot me."

Kerns explains that this next car is obviously more respectful as the car changes lanes, passes him and then pulls back over to the road.

"Thirty seconds later another vehicle, this time a pickup, pulls out, comes down, right down the lane, right off my elbow and zips right past me," he says with enthusiasm and a hint of rage.

"The commonality between the four-door sedan and the pickup," he says, is that both were Lewis and Clark County Sheriff's vehicles. "They should have known the difference, they should have had the training," he says, now visibly angry, "They should have been courteous, and it's a courtesy question. And passing this legislation is not going to affect it.

"People refuse to extend the courtesy to slower traffic be they runners, be they bikers. I don't see where this code change will make any difference and that's why I'm a 'no,'" Kerns concludes before sitting again at the long committee table.

When the committee holds a vote on the bill, it passes 9-3 with Kerns, Jerry O'Neil (R-Kalispell) and Lee Randall (R-Broadus) as the three dissenting votes.

After the passing vote in committee, the bill is brought to the House floor within the week by sponsor Wilson. On the floor, Wilson rises to defend the legislation as an update to current bicycle safety code in state law and explains how states across the country have adopted similar "safe passage" legislation to encourage motorists to move over when encountering a bicycle on the roadway.

Representative Wilson gives a brief introduction to the bill on the floor and sits to welcome discussion on the issue.

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Representative Krayton Kerns is one of the first to rise and speak to the bill.

"I rise in opposition to this bill and, uh, principally because it won't work, it won't affect anything," Kerns begins. "And in testimony [in the Transportation Committee] we heard lots of stories from people who were hit on a bike and we saw lots of photographs of destroyed bicycles and truly it's a tragic event and I will tell you this: there is nobody in this chamber that spends more time running or biking on a road than I do."

Kerns barely pauses in his monologue, continuing, "And from personal experience I will tell you why this isn't going to work. January 8, 5:30 a.m. in the morning, I'm running north on Montana here."

Kerns launches again into his account of the near-miss by the Lewis and County Sheriff's Department vehicles. He has told a similar story in the Transportation Committee a week earlier and repeats his tale again on the floor.

"We've just been in session one day," he sets the scene. "It's dark. I wear reflective straps, headlamp, red flashing light. You can see me for miles. I run all the time."

"I'm running along," he says. "There's nobody on the street at that hour. It is basically deserted. I'm going north. I'm right on the shoulder of the road between Custer and Cedar [Streets] and because of the snow there's no sidewalk, there's no place to run otherwise."

He explains, "I'm running facing traffic, right on the white line, or perhaps a little outside of the white line. One set of headlights pulls out on the road and starts coming my direction. I watch him, I watch him very closely and it's obvious he's not going to change lanes, he's going to stay right in this lane. He comes right off of my right elbow but because I've got a sight on him I know I could jump if I had to at the last minute."

He explains that the car that almost hits him is a little sedan. He describes the scene with agitation, applying a blank stare while looking about the room at his colleagues, settling his gaze on no one in particular.

"A few seconds later," he says, "another car, again, half a mile away pulls out on the road and comes my direction. About two hundred yards from me I can tell they spot me because they turn on their directionals and they move into the next lane. They come past me

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safely; as soon as they're past me, they come back in the lane.

"I run on about another twenty seconds; another car comes onto the road, again headlights. I'm watching them. It's a pickup this time," he continues. "They come right down, do not change lanes, they're right up against me. As they come by, 35 miles an hour. Maybe it wouldn't have killed me, would've banged me up. I debated on jumping over the snowbank but I kept going; everything was fine."

Kerns wraps up his tale for the second, or perhaps third time in an audience of his colleagues.

"Here's why this bill will not affect safety in any way, shape, or form," he informs his fellow members. "Both of those vehicles—the sedan and the pickup—the minivan went around me, the sedan and the pickup were Lewis and Clark County Sheriff's vehicles."

He is brazen in his criticism, saying, "People trained in public safety should know what to do when there's hazards on the road, and they could very easily have moved over and that's why this bill will not affect anything and I'm a 'no.'"

Kerns sits and the discussion on the floor continues. When the clerk calls for a vote, the bill fails with a 43 to 57 vote in the House. The Republican lawmakers who had voted yes in committee also vote yes on the floor, but the majority of Republicans tend to vote in line with Kerns, especially when he is outspoken on an issue.

A week later, Kerns asks the Speaker of the House to recognize a special request, a point of personal privilege. He rises on the floor and addresses his fellow House members nonchalantly.

"Speaker spoke too early yesterday when he said there had been no apologies on the floor," he says without a hint of remorse but instead as almost a joke. "Well, I have one. I have to humbly fall on my sword. Apparently the outside world does watch us on TV."

There is a soft chuckle of laughter in the chamber. Kerns references statements he made in his testimony a few weeks earlier. "When I was talking about the story where I was running along north Montana Avenue and was just about put in the ditch by two Lewis and Clark County Sheriff's deputy vehicles?"

Apparently the Lewis and Clark County Sheriff's Department had been watching legislative television because, as Kerns explains, "They went through all their dash-cams, all their records of where their vehicles were at that particular time and I can say unequivocally,

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without a doubt, it was not two Lewis and Clark County Sheriff's vehicles."

Kerns switches back to the solid and forceful tone he is known for on the floor, explaining, "It was some other two law enforcement vehicles with light bars and in the darkness in my peripheral vision I was incorrect when I read them.

"For that I humbly apologize to the sheriff and to the body," he says and sits again at his desk.

The House Journal for the day reads: "On a Point of Personal Privilege Representative Kerns apologized to the Lewis & Clark Sheriff's Department for having said in testimony earlier in the session that two sheriff vehicles had come close to running him down while he was jogging. After the sheriff's department reviewed their videos it was determined that it was not them who had caused Representative Kerns concern, but was other officers with light bars on the roof of their vehicles."

Although Krayton Kerns continued to serve another three months after this incident as Chair of the House Judiciary Committee and a representative for the district of Laurel, he was ineligible to run again for his seat due to term limits.

Chapter 9: End of Session

The preceding transcriptions represent only a sliver of the broad base of discussions and debates held on the Montana State House floor in the 2013 session and during the interim session that followed. In an attempt to enlighten and inform the citizenry of Montana, I've presented these few issues to provide a general overview of work in the State House. Issues were chosen over the course of the session and were narrowed down from an original list of over three dozen. Eventually, transcriptions were limited to debates citizens would likely find compelling or relevant.

Through my training as a news journalist and publisher I attempted to avoid bias and present all issues as fairly as possible. Admittedly, if there is a bent to the writing, my style may reflect my perception and party influence as a Democrat.

Countless issues lie untouched in this retelling of the session. A full transcription of any of these issues would provide an even broader base of knowledge and understanding of the process of democracy at the state level.

Information is readily available for citizens who wish to know more about the issues and the process of governance. House and Senate floor sessions and committee meetings, even interim session meetings, are available as streaming audio and video online, and are broadcast live and later archived at the Montana Legislature website at leg.mt.gov. Many of these issues have also been discussed in the Montana press and in the national media from all sides and perspectives. Articles on a variety of issues are readily available online at news sources such as the *Helena Independent Record*, the *Great Falls Tribune* or Montana Public Radio as well as many other sites on the internet or at a local library.

My experience during the active session was one of listening and learning, and I appreciate the great value in the extensive research of subjects, issues and individuals. I rarely spoke on the floor during session. Instead, I spent considerable time delving into issues in order to make better-informed votes.

I worked on and presented legislation for a number of issues dur-

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ing the course of the session. I worked to make breast cancer screening for women with high risk factors more affordable, a bill I had to blast to the floor from the House Health and Services Committee. I was unsuccessful in this blast, but I did count many other successes during my term. I updated code to support the continued broadcasting of legislative business by the Helena Civic Television Service, and I worked on issues in both the Business and Labor and Transportation Committees on a near-daily basis.

My legislative service was my first priority after raising and caring for my 4-year-old boy. I faced a number of challenges as a single parent. I regularly missed early-morning caucus meetings and many times had to bring my blessedly well-behaved son on the floor for long Saturday or evening sessions. I think my son benefitted overall by witnessing my dedication to the job of representing our neighbors back in Livingston. He certainly understood what I did for a living and exhibited great pride and thoughtfulness about our experience.

During my campaign in 2012, I had stressed the need for the state to build resiliency into our top economic sector, agriculture, by considering the long-term effects of climate change. This was my pet issue during the session.

Many states and the federal government are actively working on this issue. The U.S. Military Strategic Studies Institute even notes, "The idea that there is such a thing as climate change is as close to established scientific fact as one can get." The institute works on active strategy to build resiliency into our defense sector, bearing in mind the wide range of implications climactic changes will have on national security.

I focused on building resiliency into our agricultural sector in the face of existing and continuing global climate change. My primary objective was encouraging the state to accept and use the science of climate data in crafting policy. I narrowed this issue down to the potential effects on water supply and demand in the coming decades and the impact it would have on our agricultural sector, as noted, Montana's top economic sector.

I worked across the aisle and involved farmers and ranchers who were witnessing the effect of sustained climate changes on their crop types and yields. I visited with a wide variety of Montana university professors who were working on cutting-edge data-monitoring de-

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vices in climate and modeling programs. As the session drew to a close, I presented a House Joint Resolution to study climate variability and future water resources to the House Agricultural Committee. The legislation was quickly dismissed.

"This is gumdrops and lollipops," said Krayton Kerns (R-Laurel), and Representative Mike Lang (R-Malta) commented that this was something God would take care of in the future. The scientists who had come to give testimony shrugged and walked away to continue their work. These scientists had given testimony in a few committees during session and although there had been initial optimism for my particular study, the result had been the same: denial.

The committee squashed the study and an entire session of work for me seemed nearly a waste. In the days that followed, I was approached by a number of House members from both sides of the aisle who believed the legislation actually had real merit. They encouraged me to ask leadership to place me on the Water Policy Interim Committee where my study might get another chance. I did this knowing the appointment to such a technical committee would be a long shot for a freshman legislator.

Session closed for me with an anticlimactic tone. My son and I returned to Livingston and our lives moved on. I met with my local political party and briefed them on the session and then began compiling this book.

After a few months, a letter came from Legislative Services in Helena. I found myself unable to wait until I left the post office to open it. Inside was the news that I had been appointed to the Water Policy Interim Committee. I jumped for joy and twirled around as if I had just won the lottery, beaming as I left the building.

Within a few weeks, I started working again on legislative business and a study of scientific climate data was underway by the committee, voted as a minor priority by the members but to be investigated in depth. After a lengthy presentation on the issue, all but one member of the bipartisan interim committee agreed it was imperative that the state use available climate data to project future water issues in the agricultural sector.

The policy study on climate variability and agricultural water use was put to use in many ways in crafting the State Water Plan for the next twenty years. The Water Policy Interim Committee oversaw the

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formulation of this plan by dozens of independent and state agencies and organizations.

Listed as the second recommendation in the executive summary of the State Water Plan is the priority, "Be better prepared to manage water in real-time to adjust to seasonal changes in supply and demand as well as prepare for longer term climatic changes." Scientific data, even that which indicated sweeping climatic change already underway, was successfully considered in state policy. In the State Water Plan, there was also the recommendation to keep a repository of climate data at the State Library for entities to share.

Unfortunately, the politics of "global warming" have stymied scientific data for decades in Montana. In my work in the State House, I found great success in encouraging legislators to use this data going forward. Stakeholders and state departments can only benefit from the improved science.

While I continue to plan for the next round of House business after the 2014 election, I accept the nature of politics to be fickle. The voters may not choose for me to return.

The business of elections and lawmaking is similar across the nation. People are elected by citizens to serve their interests at a higher level. Some lawmakers have agendas and others come with open minds. Some are willing to work with others and some choose only the counsel of their own conscience. Some work for the good of their own district and others for the best interests of the state or country, or even a corporate interest.

Many times a voter decides to send a candidate to work as a legislator without knowing for whom they are really voting. A simple television advertisement, front door visit, or even a collection of yard signs can determine a vote.

Garnering support from the majority of the community is no easy task for a candidate, and the constant two-year election cycle of a House representative can be exhausting. A campaign can take a toll on an individual. Serious hate and envy along with often-brutal opposition tactics—sometimes from within one's own party—can be demoralizing.

In the experience of serving in the Montana State House, I realize that each person is there despite the requirement of great personal sacrifice. To put oneself out in the public eye and invite criticism and

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scorn is not something most individuals would do willingly, hence the basic respect I eventually developed for each and every one of my fellow colleagues on the floor.

We may all wonder why good people ever go into politics or if indeed they do. I consider myself a good citizen, a proud Montanan and American. I saw that many good people like me serve diligently regardless of the personal sacrifice. These people represent their districts and work together for the best interests of their communities and society.

While in office I have attempted to act as a representative of the collective community I serve, favoring the majority with my vote, but listening earnestly to the perspectives of dissenting opinions. I seek the opinion of my constituents and encourage communication between us while serving in the House.

Unfortunately, there exists a smallness, a pettiness which may always undermine democracy across the nation. This is the collective scorn of people who assume all politicians are essentially evil or bad. Unfortunately, when this applies across the board many worthy candidates or lawmakers get painted with a broad stroke and dismissed by voters. It is sometimes the best among these rare politicians who are the most maligned and the worst who are celebrated.

Upon reflection on my time in the Montana State House, I found that the reality of lawmaking in this state and many others is a manipulation by wealth and power. We are not far from the feudal days of our ancestors in England and Europe who served a lord or king selected solely because of their fortune and influence.

I have seen in my work that there is now prevalent a considerable flaw in our current system: the idea that only one perspective is valid and should be reinforced. In my experience I have seen that true democracy takes compromise.

Manipulating the voter's perspectives to see only one side has become an art form for political operatives and organizations. Through the media and cultural gossip, such organizations are able to buy votes with public influence and advertising. Once elected and ensconced, the beneficiaries of these campaigns often make poor choices for the districts they represent in order to repay those who influenced their election. These lawmakers are not often open to compromise.

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In view of my insider observations, the most danger to our democracy at present is the system of unchecked lobbying by special interests to specific political parties and candidates to further advance the interests of corporations, a system of lobbying which takes into account corporate interests as stimulation of the economy and discounts the health and well-being of its citizens.

If indeed the voting system works, the best people for the job will rise up to win and the corporate interests will be put in check, but this will take an informed and involved citizenry.

Voters have the ability to seek out worthy candidates and research backgrounds and histories of their potential representatives, but few do. Many people are disillusioned with the entire democratic system in America, thinking it not so different from that of the monarchy of other earlier civilizations. Ultimately, the citizenry always bears the responsibility for their own governance. Democracy may limp along in America but I will continue to have ultimate faith in the power of the American voter.

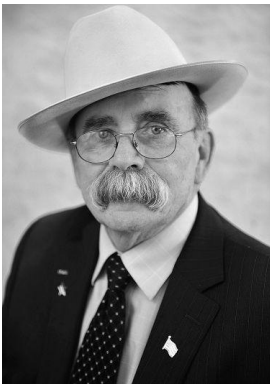
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For a frame of reference, photographs and short biographies of each lawmaker are provided below and include, when available: education, occupation, origination, residence, family and time served in the House or Senate.

Throughout the process of compiling this book, no contact was made with lawmakers in regards to their perspective on any issues or their own backgrounds. All information was compiled via verbatim transcriptions and from researching public sources.

One hundred representatives serve in the Montana State House and fifty members serve in the Montana Senate. Legislators are limited to four two-year terms in the House and two four-year terms in the Senate but may serve in both chambers for a total of 16 years.

The following biographies are for most lawmakers mentioned in the book, but many other individuals worked on important legislation during the session on the floors of the Montana House and Senate.



Duane Ankney (R-Colstrip) represents Colstrip, east of Billings near the North and South Dakota borders. Ankney's professional experience includes working as a plant foreman for Spring Creek Coal Company and mail foreman at Central Feeds; he also worked for the Western Energy Company. Ankney served in the U.S. Navy from 1964 to 1969. He is married and the father of five children. He was first

elected to the Montana House of Representatives in 2007.

Bryce Bennett (D-Missoula) is a fifth-generation Montanan who grew up in the small agricultural town of Hysham, Montana. He graduated from the University of



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Montana in Missoula in 2007. Bennett has a history in the state of grassroots organizing for political candidates and causes like preventing cyanide leach mining. He worked as committee staff in the 2009 legislature and "became inspired by the process and its ability to change people's lives for the better if done right." He works for Forward Montana, an organization working to engage Montanans in the political process. He has served in the House since 2011.



Gerald "Jerry" Bennett (R-Libby) attended Libby Public Schools and graduated in 1974. He runs a septic business in Libby and serves in his community as chairman of St. John's Hospital Foundation. He is married with two children. He first served in the House in 2009.

Mark Blasdel (R-Somers) is a third generation Montanan.

graduated from Flathead Valley High School, attended Flathead Valley Community College and finished his degree in Hospitality and Business Administration at the University of Nevada in Las Vegas. He runs a family catering business in the Flathead. He and his wife have two school-age children. He was the fifty-second Speaker of the House and his motto was "More



work, less politics." He first served in the House in 2007.



Clarena Brockie (D-Harlem) is a Montana native and a member of the Aaniiih (Gros Ventre) Tribe. She earned a bachelor's degree from Northern Montana College (now Montana State University-Northern in Havre) and a master's degree from the University of Arizona in Tucson. She resides in Hays, Montana on the Fort Belknap Indian

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Reservation and serves as Dean of Student Affairs at Aaniiih Nakoda College in Harlem. She and her husband have four children and several grandchildren. She served her first term in the House in the 2013 session.



Christy Clark (R-Choteau) is a native Montanan, rancher and mother of three. She was elected Vice Chair of the State Republican Party, defeating a Tea Party favorite, in 2011 but lost the position in 2013. Starting in the 2013-2014 session, Clark served as a Majority Whip in the House. She first served the House in 2011



Rob Cook (R-Conrad) is a Montana native. He earned a B.S. in Mechanical Engineering from Montana State University and worked as an engineer at Peterbuilt Motors, Texas Instruments, and Boeing Military Aircraft. He is a native Montanan. He is a member of the Montana Business Advocates for Sensible Elections who advocate "working with Democrats to solve problems facing the state, such as adequate funding for public schools, access to health care and money for public infrastructure." He has served in the House since 2011.



Alan Doane (R-Glendive) is a native Montanan, rancher and construction worker. He is admittedly pro-life, pro-gun, Christian, conservative, pro-business, and fifth-generation Dawson county. He currently serves on the Dawson County Land Advisory Board. On his campaign website he quotes the following Bible scripture: "Do nothing out of selfish ambition or vain conceit, but in humility consider others better than yourselves.

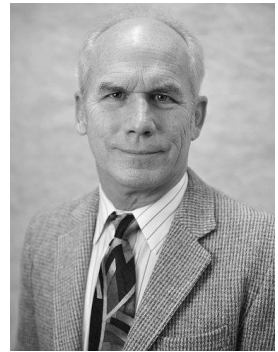
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Each of you should look not only to your own interests, but also to the interests of others.” Philippians 2:3-4. He is married and the father of four children. He was first elected to the House to serve in the 2013 session.



Jenny Eck (D-Helena) first came to Montana on a student exchange from Smith College in Northampton, Massachusetts. She worked as a consumer protection advocate at the Montana Attorney General's Office before being elected to the House to serve in the 2013 session. She is the current Program Manager for Carol's List, an organization working to elect more women in Montana. She lives in Helena with her husband and two school-age children.

Senator Tom Facey (D-Missoula) is a Missoula native who earned degrees in biology and education at the University of Montana. He has been a high school and middle school science teacher in and around Missoula for 34 years. He served in the House from 1999 until 2006. He was elected to the Senate in 2010 and is serving his second term as senator. His grandmother, Representative Florence Kerr Facey, was the third woman to be



elected to the Montana Legislature in 1923.

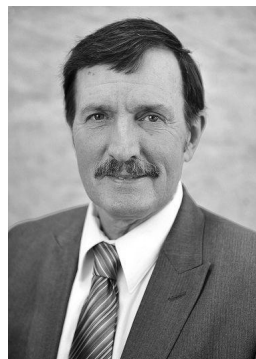


Steve Fitzpatrick (R-Great Falls) was born and raised in Helena, attended college at Montana State University and law school at the Arizona State University College of Law. He is a lawyer in private practice in Great Falls where he lives with his wife and two daughters. In an interview with a local news station, Fitzpatrick indicates his priority in government is to "lower taxes, eliminate unnecessary regulation, and promote responsible

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energy and natural resource development." He was first elected to serve in the House in the 2011 session.

Kelly Flynn (R-Townsend) is a Montana native and a fourth-generation Montanan. He earned a B.A. from Western Montana College (now University of Montana Western in Dillon) and has worked as a high school physical education teacher and coach. He is also a rancher, including serving as President of Hidden Hollow Hideaway Cattle and Guest Ranch near the Missouri River. He is the former Chair of the Montana Board of Outfitters and former Chair of the Broadwater County Chamber of Commerce. He and his wife have two children. He first served in the House in the 2011 session.



Steve Gibson (R-Helena) serves the district of East Helena. He has been a Montana resident for 37 years after earning a B.S. at the University of Minnesota. He was a founding member of the East Helena School Foundation and a Correctional and Parole Officer as well as Superintendent and Administrator for the state juvenile correctional facility for over 30 years. He received a Montana Correctional Lifetime Achievement Award in 2007. Unlike many Republican lawmakers, Gibson is frequently endorsed by Democratic

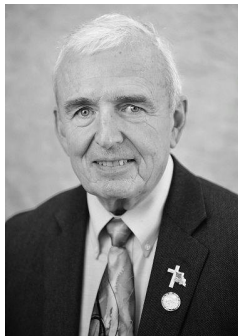


organizations such as the AFL-CIO labor organization and MEA-MFT teacher's union. He and his wife live in East Helena and have two grown children. He was first elected to the House to serve in the 2011 session.

Carl Glimm (R-Kalispell) is a Montana native and graduate of Montana State University. He and his wife own a custom home construction and contracting business in the Flathead Valley

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and are raising two school-age children. He notes on his campaign website that his children are the "Driving reasons that I am running for office...I want to leave our state better for our children." He first served in the 2013 session.



Edward Greef (R-Florence) is a veteran of the United States Air Force from Washington. He had a long career in sawmill sales and as a lumber broker and in lumber manufacturing. Now retired, he lives in Florence in the picturesque Bitterroot Valley in southwest Montana. He and his wife have two grown daughters. He first served in the 2011 session.

Dave Hagstrom (R-Billings) is a Montana native who received a degree in psychology from Eastern Montana College (now Montana State University-Billings). He and his wife continue to live in Billings. They have four children and numerous grandchildren. Hagstrom lists his occupation as "affordable housing developer" or landlord. According to the *Billings Gazette*, where Hagstrom's business ventures in this occupation have been frequently profiled, some of his renters rely on the federal Housing Voucher Program, often called Section 8. Federal Housing and Urban Development records also show at least \$174,119 in subsidies going to low-income housing projects spearheaded by organizations in which Hagstrom played key roles. He first served in the House during the 2013 session.

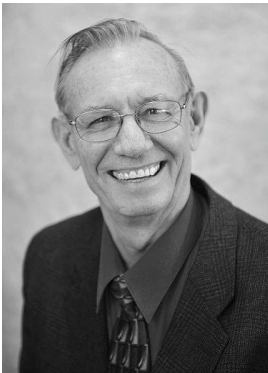


David Halvorson (R-Sidney) was born in Montana but was raised in North Dakota where he eventually attended the University of North Dakota. He attended the U.S. Military Academy at West Point before returning to Montana to work in a family radio business in Sidney and as a

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wheat farmer. In the early 1990s he worked during nine sessions as a legislative staff member in a variety of capacities including House bill reader. He was often referred to as the "fastest voice in the West." After returning to his hometown of Sidney in 2010, Halvorson served his first term in the House in the 2013 session. He was diagnosed with cancer during his first term and died in early July of 2013.

Chuck Hunter (D-Helena) is a Helena native. He has a masters degree in education and served for 22 years in Montana state government. running a variety of programs including Medicaid, the Childrens Health Insurance Program (CHIP), Unemployment Insurance, human rights, and Workers' Compensation. He now owns and operates several small businesses in Helena. He and his wife have four children. He first served in the Montana House of Representatives in 2007, but he has worked in every legislative session since 1987. He was Minority Leader in the 2013 session.



Verdell Jackson (R-Kalispell) was born in Cortez, Colorado and attended Auburn University in Alabama, Arizona State University and the University of Colorado. He worked as a school superintendent, vocational instructor and business and journalism instructor throughout his teaching career. He and his wife reside in Kalispell.

They have one grown child and many grandchildren. He

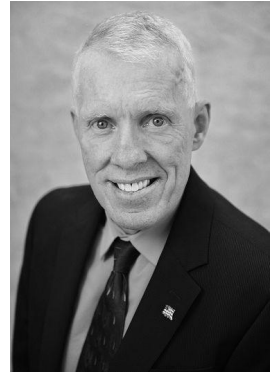
served four terms in the House before beginning his service in the Senate in 2007.

Doug Kary (R-Billings) is originally from North Dakota where he attended Minot State University. He worked in the marketing de-



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partment of Montana-Dakota Utilities for over 20 years and continues to work as a graphics consultant for Selby's, a Montana-based printing company. He lives in Billings with his wife. They have two grown children. He served his first term in the House in 2011.



Krayton Kerns (R-Laurel) was born in Sheridan, Wyoming. He earned a B.S from the University of Wyoming and a PhD in veterinary medicine from Colorado State University. He is a ranch owner in Wyoming and the owner of a veterinary service in Laurel, where he has made his residence since the early 1980s. He and his wife have three grown children and a number of grandchildren. Kerns is most widely known for successfully sponsoring a "castle doctrine" bill in 2009 which allows a person at home to use deadly force in the face of any perceived threat. He served four terms in the House, the 2013 session his last term of service.



Mike Lang (R-Malta) is a Montana native. He is a certified crop advisor who founded and owned Northern Ag Service, which continues to operate grain elevators and warehouses throughout the grain belt of the U.S. He attended Carroll College in Helena and Eastern Montana College (now Montana State University-Billings). He and his wife have three grown children and a number of grandchildren. He served his first term in the House in 2013.

Ed Lieser (D-Whitefish) is originally from St. Paul, Minnesota where he earned his B.S in natural resource management from the University of Minnesota. He served in the U.S. Navy in Vietnam and later became a forester in the Flathead National Forest. He worked for the National Forest Service until his retirement, when he founded a forestry consulting business specializing in wildfire assessment. He



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and his wife have three children. He served his first term in the House in 2013.



Margaret "Margie" MacDonald (D-Billings) is a native Montanan who graduated from the University of Montana. She worked as staff director at the Northern Plains Resource Council, the Executive Director of the Montana Association of Churches, and Director at the Montana Office of Community Service. She and her husband have two children. She served her first term in the House in 2009 and as Minority Whip in the 2013 session.

Kelly McCarthy (D-Billings) earned an MBA in global business from the University of Texas in Dallas and a B.S. in professional aeronautics from Embry-Riddle Aeronautical University in Daytona Beach, Florida. He served 16 years in the U.S. Air Force and worked for eight years as a defense contractor and intelligence analyst for Raytheon Australian Operations. He is the founder and moderator of "Politics in the Pub," a nonpartisan group aimed at promoting "civility in political discourse and cooperation in the political arena." He first served in the House in the 2013 session.



Bill McChesney (D-Miles City) is a Montana native. He earned a BAE in secondary education from the University of Montana and worked until retirement as a district administrator at the Montana Department of Transportation. He currently works as a part-time paraprofessional aide at a Miles City elementary school. He and his wife have three children. He first served in the House in the 2007 session.

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Jonathan McNiven (R-Huntley) is a Montana native. He attended Montana State University in Billings, earned two associate degrees from Mesa Community College in Mesa, Arizona, and a bachelor's degree from Arizona State University. He owns his own company, McNiven Enterprises, a website development and hosting business. He and his wife are the parents of three young boys. He first served in the House in 2011.



David "Doc" Moore (R-Missoula) is a Montana native. He earned a B.S. in business administration and a B.A. in organizational communications, both at the University of Montana in Missoula. He also earned a master's degree in public administration in 2013 from the University of Montana. He has worked as an automotive service excellence technician at Bitterroot Motors, Bakke Tire, and Tire-Rama. He is also a SCUBA instructor. He is widowed with two stepchildren. He

served his first term in the House in the 2013 session.



Reilly Neill (D-Livingston) is originally from Memphis, Tennessee. She attended the University of Montana in Missoula and worked in newspaper publishing in Colorado, New Mexico and Montana before founding the weekly Livingston Current in Livingston which she published and edited for seven years. She currently works as Interim Executive Director at the Park County Environmental Council, a nonprofit organization which works on environmental issues in the area north of

Yellowstone National Park. She has one young son and four stepchildren with her husband. She first served in the House during the 2013 session.

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Carolyn Pease-Lopez (D-Billings) is a Montana native and a member of the Crow Tribe. She earned a B.A. in sociology from the University of Colorado in Boulder. She has worked as a college advisor at Little Big Horn College and currently works as a student coordinator at Rocky Mountain College in Billings. She currently serves as co-pastor at First Crow Baptist Church. She and her husband have five children and many grandchildren and great-grandchildren. She first served in the House during the 2009 session.



JP Pomnichowski (D-Bozeman) is a fifth-generation Montanan. She earned a B.S. in technical communications from Montana State University in Bozeman and has worked as an Emergency Medical Technician, news broadcaster and producer, technical writer, web developer, hospital worker and volunteer firefighter. She has also served as Chair of the Bozeman Zoning Commission and the Bozeman Board of Adjustment as well as President of the Bozeman Planning Board.

She first served in the House during the 2007 session.

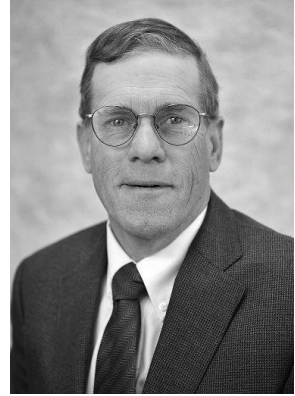


Lee Randall (R-Broadus) is a Montana native. He attended Montana State University in Bozeman where he studied agriculture business. He is a rancher and volunteers as coach and umpire for Little League Baseball. "I trust the people to know how to manage their money, to earn a livelihood, and how to preserve our beautiful state without endless instruction from government bureaucrats," he says in an interview with the *Billings Gazette*. He and his wife have one child. He first served

in the House during the 2009 session.

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Alan Redfield (R-Livingston) is a Montana native. He earned a B.S. in agricultural education from Montana State University in Bozeman and worked as an agriculture teacher in Scobey High School and at Park High School in Livingston. He operates a family ranch about 30 miles north of Yellowstone National Park near Livingston. He and his wife have twin daughters. He first served in the House during the 2013 session.



Scott Reichner (R-Bigfork) is originally from Long Beach, California. He is a graduate of Brigham Young University in Provo, Utah. He worked in finance for 23 years and has lived in Montana for nearly 20 years. He is the owner of Flathead Mortgage Company. In his community, Reichner served for eight years on the Bigfork School Board. He was the Montana State Chairman for the Mitt Romney for President campaign and the State Chair for the American Legislative Exchange

Council (ALEC). He and his wife have 10 children. He first served in the House in the 2009 session.

Nicholas Schwaderer (R-Superior) is a fifth-generation Montanan. He attended the University of Montana and earned a law degree in international, maritime and admiralty law from Plymouth University Law School on the South Devon coastline in England. He works for the Montana Policy Institute, an organization which works to influence policy from a "free market, small government, individual responsibility perspective" and advertises itself as Montana's only "free-market think tank." He served his first term in the House in the 2013 session.



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Bridget Smith (D-Wolf Point) is from Glendale, California. She is a community social worker in Wolf Point, the largest community on the Fort Peck Indian Reservation. She has been active in the Wolf Point community in social services and politics for over 40 years. She is the mother of two children. She first served in the House during the 2013 session.



Wendy Warburton (R-Havre) is a Montana native. She earned a B.S. in mass communications from Liberty University in Lynchburg, Virginia. She works as a salesperson for *Tricia's Trader*, a newspaper serving northern Montana, and as a freelance writer. She first served in the House during the 2009 session and served as Majority Whip in the 2011 session.

Ted Washburn (R-Bozeman) is originally from White Plains, New York. He attended New York State Police Academy and graduated from the F.B.I. National Academy. He was a police officer in Bethlehem, New York, and the chief conservation officer for Region Four with the New York State Department of Environmental Conservation until his retirement. He and his wife have three grown children. He first served in the House during the 2009 session.



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Lea Whitford (D-Cut Bank) is a Montana native and a member of the Blackfeet Tribe. She earned a B.A. in physical education from Montana State University-Northern in Havre, an A.A. in Blackfeet studies from Blackfeet Community College in Browning, and a master's degree in education from Montana State University in Bozeman. She works as a department chair at Blackfeet Community College. She also operates a trucking business with her husband. They have three

children. She first served in the House in the 2013 session.



Kathleen Williams (D-Bozeman) is originally from San Francisco, California. She earned a B.S. in resource economics from the University of California at Berkeley and an M.S. in recreation resources from Colorado State University in Fort Collins. She works as Executive Director of the Instream Flow Council, a non-profit conservation organization. She has also worked in planning and conservation for Montana Fish, Wildlife and Parks. She worked for nearly five years as a

research analyst for the Montana Legislative Environmental Policy Office. She has two stepchildren with her husband. She first served in the House in the 2011 session.

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Nancy Wilson (D-Missoula) is a Montana native who attended Helena High School and the University of Montana at Missoula. She worked for the university for 28 years, including as director for the Associated Students at the University of Montana Office of Transportation. She has two children and resides with her husband in Missoula. She first served in the House in the 2013 session but had to resign her seat post-session due to an error in enrolling in a state retirement plan before a 90-day period had passed since leaving her last job.



Tom Woods (D-Bozeman) is originally from Cleveland, Ohio. He first came to Montana to work in Yellowstone National Park as a young man and later earned a B.S. at Kent State University in Ohio and earned a B.S. at Montana State University in Bozeman. He is an adjunct professor at Montana State University, teaching cellular and molecular biology and physics. He and his wife have two school-age children. He served his first term in the House during the 2013 session.

Bill Language

The following are the actual bills initially presented to committees in the Montana State House and Senate. Code changes are indicated by underlined text or strike-through text.

All bills are also available in full text online to help clarify any specific issues about language in legislation. For full text and information on any bill in the Montana State House or Senate visit the online database at **leg.mt.gov**.

The Montana “LAWS” is a comprehensive, searchable online database that provides information on each bill. There are pull down menus for Senate or House bills. One should specify HB for House Bill or SB for Senate Bill and enter the bill number noted to access the information. Bills can also be searched by committee or a specific legislator online.

Legislative Services drafts bills for lawmakers before, after and during the short 90-day session. Bill drafts are often signed and amended before being presented by the sponsor to the committee. Hence, many of the bills appear in document form online as “marked-up” with changes and strike-through text.

Once a bill is returned to the House or Senate clerk office, no further changes may be made, with the exception of amendments brought on the floor or voted on by a committee.

All information about a bill’s progress, including votes in committee and on the House or Senate floor, along with specifics on each vote cast by a legislator, is also available along with the bill text online.

The Montana State Legislature website maintains a variety of resources for citizens, voters and lawmakers. Check out the site at **leg.mt.gov**.

Senate Bill 107

63rd Legislature

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AN ACT REVISING LAWS RELATING TO DEVIATE SEXUAL CONDUCT; REVISING THE DEFINITION OF "DEVIATE SEXUAL CONDUCT"; AND AMENDING SECTIONS 27-2-216, 41-3-102, 45-1-205, 45-2-101, 45-5-505, 46-1-502, AND 52-3-803, MCA.

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

Section 1. Section 27-2-216, MCA, is amended to read:

"27-2-216. Tort actions -- childhood sexual abuse. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, ~~45-5-505~~, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;



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(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.



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(7) (a) "Child abuse or neglect" means:

- (i) actual physical or psychological harm to a child;
- (ii) substantial risk of physical or psychological harm to a child; or
- (iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(i) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

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

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

- (a) a member of an Indian tribe; or
- (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Indian child's tribe" means:

- (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
- (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal



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law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) "Parent" means a biological or adoptive parent or stepparent.

(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;



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(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;



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(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, ~~deviate sexual conduct~~, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.



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(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503,



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or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) Except as provided in subsection (9), a prosecution under 45-5-504, ~~45-5-505~~, 45-5-507(1), (2), (3), or (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be



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brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.

(10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.

(11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed."

Section 4. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.



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(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo



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contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

- (a) create or confirm in another an impression that is false and that the offender does not believe to be true;
- (b) fail to correct a false impression that the offender previously has created or confirmed;
- (c) prevent another from acquiring information pertinent to the disposition of the property involved;
- (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or
- (e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

- (a) to withhold property of another:
 - (i) permanently;
 - (ii) for such a period as to appropriate a portion of its value; or
 - (iii) with the purpose to restore it only upon payment of reward or other compensation; or
- (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means ~~sexual contact or sexual intercourse between two persons of the same sex or~~ any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,



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form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective



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juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will



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occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,



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an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or



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services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:



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(i) creates a substantial risk of death;
(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury to or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.



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(76) "Threat" means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit a criminal offense;
- (d) accuse a person of a criminal offense;
- (e) expose a person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of a person;
- (g) reveal information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration



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of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 5. Section 45-5-505, MCA, is amended to read:

"45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

~~(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section."~~

Section 6. Section 46-1-502, MCA, is amended to read:

"46-1-502. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

- (a) deliberate homicide, as described in 45-5-102;
- (b) mitigated deliberate homicide, as described in 45-5-103;
- (c) intimidation, as described in 45-5-203;



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- (d) partner or family member assault, as described in 45-5-206;
 - (e) assault on a minor, as described in 45-5-212;
 - (f) stalking, as described in 45-5-220;
 - (g) aggravated kidnapping, as described in 45-5-303;
 - (h) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, ~~45-5-505~~, or 45-5-507;
 - (i) endangering the welfare of children, as described in 45-5-622;
 - (j) sexual abuse of children, as described in 45-5-625; or
 - (k) ritual abuse of a minor, as described in 45-5-627.
- (3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.
- (4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.
- (5) This section does not prohibit the parties from engaging in traditional plea negotiations."

Section 7. Section 52-3-803, MCA, is amended to read:

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

- (1) "Abuse" means:
- (a) the infliction of physical or mental injury; or
 - (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Exploitation" means:
- (a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;



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

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

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

(5) "Long-term care facility" means a facility defined in 50-5-101.

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

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

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

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

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily



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organ or function.

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

Section 8. Directions to code commissioner. Section 45-5-505 is intended to be renumbered and codified as an integral part of Title 45, chapter 8, part 2.

- END -

House Bill 392

63rd Legislature

HB0392



AN ACT ALLOWING FOR THE EXCAVATION AND SALE OF PALEONTOLOGICAL REMAINS FROM MAKOSHIKA STATE PARK TO BENEFIT THE PARK; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 22-3-432 AND 23-1-102, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Section 22-3-432, MCA, is amended to read:

"22-3-432. Antiquities permits. (1) A person may not excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided a permit may not be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of the investigations, containing relevant maps, documents, drawings, and photographs, must be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) ~~All~~ Except as provided in subsection (5), all heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in



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the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

(5) Antiquities permits may be granted for the excavation and removal of paleontological remains at Makoshika state park for the purpose of selling the paleontological remains and using revenue from the sale to benefit Makoshika state park. Antiquities permits granted under this subsection must be used in accordance with rules adopted pursuant to 23-1-102(5)."

Section 2. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks – rulemaking. (1) The department shall make a study to determine the scenic, historic, archaeological, scientific, and recreational resources of the state. The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department, with the consent of the commission, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. The department



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may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part.

(5) The department may adopt rules establishing conditions for the use of antiquities permits granted pursuant to 22-3-432(5)."

Section 3. Termination. [This act] terminates December 31, 2023.

- END -

House Bill 215

63rd Legislature

HB0215.02

1

HOUSE BILL NO. 215

2

INTRODUCED BY GREEF, HUNTER, PEPPERS, VANCE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DESIGNATING AN OFFICIAL STATE HISTORICAL RIFLE FOR
5 MONTANA."

6

7 WHEREAS, the Winchester Model 1873 was produced from 1873 until 1919; and

8 WHEREAS, the Winchester Model 1873 was produced in several calibers and variations; and

9 WHEREAS, Winchester Model 1873 rifles were readily available on the frontier and became hugely
10 popular, with over 724,000 produced; and

11 ~~WHEREAS, the popularity of the Winchester Model 1873 has led it to be credited as "The Gun That Won~~
12 ~~the West".~~

13

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

15

16 NEW SECTION. Section 1. State historical rifle. The Winchester Model 1873, including all calibers
17 and variations, is the official Montana state historical rifle.

18

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

21

- END -



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House Bill 249

63rd Legislature

HB0249.02

1 HOUSE BILL NO. 249
2 INTRODUCED BY DOANE, BRENDEN, CLARK, FLYNN, GALT, HALVORSON, KERNS, KNUDSEN,
3 MCCHESENEY, MILLER, D. MOORE, RANDALL, REDFIELD, SALOMON, C. SMITH, WAGONER, WHITE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE PRESENCE OF WILD
6 BUFFALO OR WILD BISON ON PRIVATE PROPERTY; AMENDING SECTION 81-2-121, MCA; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 81-2-121, MCA, is amended to read:

12 "**81-2-121. Taking or moving of ~~publicly owned wild buffalo or wild~~ WILD BUFFALO OR WILD bison**
13 **that are present on private property ~~—notice—supplemental feeding—penalty.~~** (1) When a ~~bison, wild~~ wild
14 buffalo or wild bison is present on private property where it is not authorized to be, the landowner or the agent
15 of a landowner may take any action the landowner considers necessary to protect the private property, including
16 but not limited to:

17 (a) the taking of the animal;
18 (b) the herding, driving, or hazing of the animal off of the private property; or
19 (c) notifying the department or the department of fish, wildlife, and parks of the presence of the animal
20 and requesting that it be removed. The agency with jurisdiction over the animal pursuant to 81-2-120 or 87-1-216
21 shall remove the animal within 72 hours of receiving the notification.

22 (2) A landowner or the agent of a landowner who has taken a ~~bison, wild buffalo or wild bison~~ pursuant
23 to this section may notify the department or the department of fish, wildlife, and parks and request that the
24 carcass or all of the remains be removed from the private property. The agency with jurisdiction over the animal
25 pursuant to 81-2-120 or 87-1-216 shall comply within 72 hours of receiving the notification.

26 (3) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a
27 landowner or the agent of a landowner for the taking, herding, driving, or hazing of a publicly owned wild buffalo
28 or wild bison, wild buffalo, or wild bison that is suspected of carrying disease and that is present on the
29 landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock
30 if the landowner or agent: IF THE LANDOWNER OR AGENT IS NOT IN VIOLATION OF SUBSECTION (4)(A).



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1 _____(a) notifies or makes a good faith effort to notify the department in order to allow as much time as
2 practicable for the department to first take or remove the publicly owned wild buffalo or wild bison that is present
3 on the landowner's property;

4 _____(b) makes a good faith effort to notify the department that a taking has occurred and to retain all parts
5 for disposal by the department; and

6 _____(c) is not in violation of subsection (2)(a);

7 _____(2) (a) A person may not intentionally provide supplemental feed to game animals in a manner that
8 results in artificial concentration of game animals that may potentially contribute to the transmission of disease.
9 A person who violates this subsection (2)(a) shall be fined not less than \$50 or more than \$1,000 or be
10 imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon
11 conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping
12 license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in
13 77-1-101, for recreational purposes for a period of time set by the court:

14 _____(b) This subsection (2) does not apply to supplemental feeding activities conducted by the department
15 for disease control purposes:

16 (4)(A) A PERSON MAY NOT INTENTIONALLY PROVIDE SUPPLEMENTAL FEED TO GAME ANIMALS IN A MANNER THAT
17 RESULTS IN ARTIFICIAL CONCENTRATION OF GAME ANIMALS THAT MAY POTENTIALLY CONTRIBUTE TO THE TRANSMISSION
18 OF DISEASE. A PERSON WHO VIOLATES THIS SUBSECTION SHALL BE FINED NOT LESS THAN \$50 OR MORE THAN \$1,000
19 OR BE IMPRISONED IN THE COUNTY DETENTION CENTER FOR NOT MORE THAN 6 MONTHS, OR BOTH. IN ADDITION, A
20 PERSON, UPON CONVICTION OR FORFEITURE OF BOND OR BAIL, MAY BE SUBJECT TO FORFEITURE OF ANY CURRENT
21 HUNTING, FISHING, OR TRAPPING LICENSE ISSUED BY THIS STATE AND THE PRIVILEGE TO HUNT, FISH, OR TRAP IN THIS
22 STATE OR TO USE STATE LAND, AS DEFINED IN 77-1-101, FOR RECREATIONAL PURPOSES FOR A PERIOD OF TIME SET BY
23 THE COURT.

24 (B) SUBSECTION (4)(A) DOES NOT APPLY TO SUPPLEMENTAL FEEDING ACTIVITIES CONDUCTED BY THE
25 DEPARTMENT FOR DISEASE CONTROL PURPOSES."

27 **NEW SECTION. Section 2. Lawful taking or moving of wild buffalo to protect private property.**

28 This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the
29 agent of a landowner for the taking, herding, driving, or hazing of a wild buffalo that is present on the landowner's
30 private property pursuant to 81-2-121.



HOUSE BILL 249

63rd Legislature

HB0249.02

1

2 NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an
3 integral part of Title 87, chapter 6, part 1, and the provisions of Title 87, chapter 6, part 1, apply to [section 2].

4

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

6

- END -



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House Bill 446

63rd Legislature

HB0446



AN ACT REVISING THE OFFENSE OF DISORDERLY CONDUCT; PROVIDING THAT DISCHARGING FIREARMS IS NOT DISORDERLY CONDUCT; AND AMENDING SECTION 45-8-101, MCA.

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

Section 1. Section 45-8-101, MCA, is amended to read:

"45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- ~~(d) discharging firearms, except at a shooting range during established hours of operation;~~
- ~~(e)(d)~~ rendering vehicular or pedestrian traffic impassable;
- ~~(f)(e)~~ rendering the free ingress or egress to public or private places impassable;
- ~~(g)(f)~~ disturbing or disrupting any lawful assembly or public meeting;
- ~~(h)(g)~~ transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- ~~(i)(h)~~ creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;

or

~~(j)(i)~~ transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection ~~(4)(j)~~ (1)(i) shall be fined an amount not to exceed



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HOUSE BILL 446

HB0446

\$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

- END -

House Bill 265

63rd Legislature

HB0265



AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING WHEN FUNDS RECEIVED BY A CAMPAIGN MUST BE DEPOSITED; RAISING THE LIMITATION ON CONTRIBUTIONS TO A CANDIDATE FROM POLITICAL COMMITTEES AND INDIVIDUALS; RAISING THE LIMITATION ON AGGREGATE CONTRIBUTIONS THAT A CANDIDATE MAY RECEIVE FROM POLITICAL PARTY ORGANIZATIONS; REVISING THE DEFINITION OF "ELECTION" FOR THE PURPOSES OF DETERMINING CONTRIBUTION LIMITS; REVISING THE TIME AND TRIGGERING AMOUNT FOR FILING CERTAIN REPORTS OF CONTRIBUTIONS; RAISING THE AMOUNT OF AGGREGATE CONTRIBUTIONS THAT MUST BE RECEIVED FROM A CONTRIBUTOR BEFORE CERTAIN INFORMATION ABOUT THE CONTRIBUTOR MUST BE DISCLOSED; ELIMINATING THE LIMITATION ON AGGREGATE CONTRIBUTIONS THAT CERTAIN CANDIDATES MAY RECEIVE FROM POLITICAL COMMITTEES; AMENDING SECTIONS 13-37-207, 13-37-216, 13-37-226, AND 13-37-229, MCA; AND REPEALING SECTION 13-37-218, MCA.

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

Section 1. Section 13-37-207, MCA, is amended to read:

"13-37-207. Deposit of contributions -- statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee must be deposited prior to the end of the fifth business day following their receipt, Saturdays, Sundays and holidays excluded, in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited must be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit must be kept by the treasurer as a part of the treasurer's records."

Section 2. Section 13-37-216, MCA, is amended to read:



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"13-37-216. Limitations on contributions -- adjustment. (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election cycle in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed ~~500~~ \$2,000;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~250~~ \$1,000;

~~(iii)~~ (iii) for a candidate for any other public office, not to exceed ~~100~~ \$500.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed ~~40,000~~ \$40,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~6,500~~ \$20,000;

~~(c)~~ (c) for a candidate for public service commissioner, not to exceed ~~2,600~~;

~~(d)~~ (d) for a candidate for the state senate, not to exceed ~~1,050~~;

~~(e)~~ (e) (c) for a candidate for any other public office, not to exceed ~~650~~ \$5,000.



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(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(b) The resulting figure must be rounded up or down to the nearest:

(i) \$10 increment for the limits established in subsection (1); and

(ii) \$50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, ~~"election"~~ **"election cycle"** means the general election ~~or a~~ **and the** primary election ~~that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.~~

Section 3. Section 13-37-226, MCA, is amended to read:

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

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

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

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

(d) within ~~24~~ **72** hours after receiving a contribution of ~~\$200~~ **\$500** or more if received between the 10th day before the election and the day of the election;

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

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

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



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reports:

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

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

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

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

(e) within 20 days after the election; and

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

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

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

(b) within ~~48~~ 72 hours after receiving a contribution of ~~\$400~~ \$200 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner pursuant to 13-37-225.

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

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

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

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



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- (a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;
 - (b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;
 - (c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and
 - (d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.
- (6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.
- (7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 4. Section 13-37-229, MCA, is amended to read:

"13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

- (1) the amount of cash on hand at the beginning of the reporting period;
- (2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of ~~\$35~~ **\$51** or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;
- (3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;
- (4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3);
- (5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;
- (6) each loan from any person during the reporting period, together with the full names, mailing



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addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

(8) an itemized account of proceeds that total less than ~~€€5~~ \$51 from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues."

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:
13-37-218. Limitations on receipts from political committees.

Section 6. Coordination instruction. (1) If both Senate Bill No. 375 and [this act] are passed and approved and if both contain a section that amends 13-37-216, then the section of [this act] amending 13-37-216 is void.

(2) If both House Bill No. 229 and [this act] are passed and approved and if both contain a section that amends 13-37-216, then the section of House Bill No. 229 that amends 13-37-216 is void.

Section 7. Coordination instruction. If both Senate Bill No. 375 and [this act] are passed and approved and if both contain a section that amends 13-37-226, then the section of [this act] amending 13-37-226 is void.

Section 8. Coordination instruction. If both Senate Bill No. 375 and [this act] are passed and approved and if both contain a section that amends 13-37-229, then the section of [this act] amending 13-37-229 is void.

- END -



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Senate Bill 395

63rd Legislature

SB0395.03

1

SENATE BILL NO. 395

2

INTRODUCED BY D. WANZENRIED

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HEALTH CARE TO

5

EXPAND MEDICAID TO CERTAIN NONDISABLED, NONELDERLY, AND NONPREGNANT INDIVIDUALS ~~AND~~

6

~~TO IMPROVE THE DELIVERY OF HEALTH CARE SERVICES IN MONTANA~~ AND TO IMPROVE THE

7

DELIVERY OF HEALTH CARE SERVICES IN MONTANA; ESTABLISHING MEDICAID ELIGIBILITY CRITERIA;

8

~~REQUIRING A REVIEW OF THE MONTANA MEDICAID PROGRAM AND THE HEALTH CARE DELIVERY~~

9

~~SYSTEM; ESTABLISHING A MEDICAID WELLNESS PILOT PROJECT; ESTABLISHING WORKFORCE~~

10

~~REPORTING REQUIREMENTS FOR CERTAIN HEALTH CARE PROFESSIONALS; PROVIDING FOR USE OF~~

11

~~UNEXPENDED MEDICAID FUNDS; PROVIDING DEFINITIONS; CREATING A SPECIAL REVENUE ACCOUNT;~~

12

REQUIRING A REVIEW OF THE MONTANA MEDICAID PROGRAM AND THE HEALTH CARE DELIVERY

13

SYSTEM; ESTABLISHING A MEDICAID WELLNESS PILOT PROJECT; ESTABLISHING WORKFORCE

14

REPORTING REQUIREMENTS FOR CERTAIN HEALTH CARE PROFESSIONALS; PROVIDING FOR USE OF

15

UNEXPENDED MEDICAID FUNDS; PROVIDING DEFINITIONS; CREATING A SPECIAL REVENUE ACCOUNT;

16

AMENDING SECTIONS ~~37-8-202, 37-8-204, 37-8-202, 37-8-204,~~ 53-6-131, 53-6-132, ~~AND~~ 53-6-133, ~~AND~~

17

~~53-6-155, AND 53-6-155,~~ MCA; AND PROVIDING EFFECTIVE DATES AND EFFECTIVE DATES AND

18

TERMINATION DATES."

19

20

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

21

(Refer to Second Reading - Yellow Bill)

22

Strike everything after the enacting clause and insert:

23

24

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Health

25

Care Reform and Cost Containment Act".

26

27

NEW SECTION. Section 2. Legislative findings and intent. (1) The intent of [sections 1 through 5]

28

is to modify and enhance Montana's health care delivery system to provide access to quality and affordable health

29

care for all Montana citizens.

30

(2) The legislature finds that to achieve the purposes of [sections 1 through 5], it will be necessary for



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- 1 state government, health care providers, patient advocates, and other parties interested in quality and affordable
2 health care to collaborate in order to:
- 3 (a) increase the number of Montanans with health insurance coverage;
 - 4 (b) provide greater value for the tax dollars spent on the medicaid program by exploring options for
5 delivering services in a more efficient and cost-effective manner, including but not limited to:
 - 6 (i) offering incentives to encourage health care providers to achieve measurable performance outcomes;
 - 7 (ii) improving the coordination of care among health care providers and health care payers;
 - 8 (iii) reducing preventable hospital readmissions; and
 - 9 (iv) exploring medicaid payment methodologies that promote quality of care and efficiencies;
 - 10 (c) contain growth in health care costs by:
 - 11 (i) curbing wasteful spending;
 - 12 (ii) avoiding unnecessary use of health care services;
 - 13 (iii) reducing the instances in which health care practitioners provide health care services in order to avoid
14 the risk of litigation; and
 - 15 (iv) reducing fraud;
 - 16 (d) ensure that there is an adequate number of health care professionals throughout the state;
 - 17 (e) provide incentives that result in Montanans taking greater responsibility for their personal health;
 - 18 (f) boost Montana's economy by reducing the costs of uncompensated care; and
 - 19 (g) reduce or minimize the shifting of payment for unreimbursed health care costs to patients with private
20 insurance.
- 21 (3) The legislature further finds that state policymakers have an interest in testing the effectiveness of
22 wellness incentives in order to collect and analyze information about the correlation between wellness incentives
23 and health status. It is the intent of the legislature to establish a pilot project in the medicaid program to evaluate
24 whether incentives to improve a recipient's management of chronic disease improves overall health outcomes
25 and reduces the long-term costs of health care for the recipient.

26
27 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], the following definitions
28 apply:

- 29 (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- 30 (2) "Recipient" means a person:



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- 1 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not
2 the person has received any benefits; or
3 (b) who receives medicaid benefits, whether or not the person is determined to be eligible.

4

5 **NEW SECTION. Section 4. Review of medicaid and health care delivery systems -- advisory**
6 **committee -- reports.** (1) The department shall review state activities related to the medicaid program and
7 delivery of health care services in Montana in order to make recommendations to the legislature on ways to make
8 the medicaid program and the health care delivery system more efficient and cost-effective.

9 (2) The department shall establish an advisory committee made up of health care providers, health care
10 consumers, and other parties interested in the way in which health care services are provided to Montanans. The
11 committee may consist of up to 12 members.

12 (3) The advisory committee shall:

13 (a) review the way in which the implementation of the expansion of the medicaid program is being carried
14 out;

15 (b) evaluate the manner in which health care services are delivered and whether new approaches could
16 improve delivery of care, including but not limited to the use of medical homes and coordinated care
17 organizations;

18 (c) review ideas for reducing or minimizing the shifting of the payment of unreimbursed health care costs
19 to patients with private insurance;

20 (d) evaluate whether providing incentives to health care providers for meeting measurable benchmarks
21 may improve the delivery of health care services;

22 (e) review options for reducing inappropriate use of emergency department services, including ways to
23 monitor for the excessive or inappropriate use of prescription drugs;

24 (f) examine ways to:

25 (i) promote the appropriate use of health care services, particularly laboratory and diagnostic imaging
26 services;

27 (ii) increase the availability of mental health services;

28 (iii) reduce fraud and waste in the medicaid program; and

29 (iv) improve the sharing of data among health care providers in order to identify patterns in the usage of
30 health care services across payment sources; and



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1 (g) receive regular reports from the department on the department's efforts to pursue contracting options
2 for administration of services to individuals eligible for medicaid as allowed under Public Law 111-148 and Public
3 Law 111-152.

4 (4) The department shall:

5 (a) coordinate its efforts with any legislative committees that are working on matters related to health
6 care and the delivery of health care services; and

7 (b) summarize and present the findings and recommendations of the advisory committee in a final report
8 to the governor and to the children, families, health, and human services interim committee no later than August
9 15 of each even-numbered year.

10

11 NEW SECTION. Section 5. Medicaid wellness pilot project. (1) Subject to any necessary approval
12 from the centers for medicare and medicaid, the department shall administer a pilot project designed to assess
13 whether providing incentives for a recipient's participation in disease management and wellness activities
14 improves the recipient's management of chronic disease.

15 (2) The department shall offer an incentive to adult recipients for meeting established targets for
16 managing chronic disease. Subject to subsection (4), the department shall establish by rule the individuals to be
17 covered by the pilot project, the chronic diseases to be included in the pilot project, the criteria that must be met
18 to receive the incentive, and the duration and amount of the incentive to be offered.

19 (3) The department may undertake the pilot project in up to five counties, at least one of which must have
20 a significant Indian population. The pilot project must begin with 60 days of receipt of federal approval, if required.

21 (4) The department may not require participation by recipients who reside in a long-term care facility as
22 defined in 50-5-101 or a community residential facility as defined in 76-2-411.

23 (5) The department shall collect and analyze information related to the pilot project to determine if the
24 project resulted in better health outcomes for participants. The analysis may include but is not limited to the
25 incentives provided, the health conditions of the participants, the number of participants who met established
26 goals, and to the extent possible, whether participants who met the goals used fewer medicaid services than:

27 (a) participants who did not meet the goals; and

28 (b) recipients with similar medical conditions in counties that were not included in the pilot project.

29

30 NEW SECTION. Section 6. Short title. [Sections 6 through 8] may be cited as the "Montana Health



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- 1 Care Workforce Data Collection Act".
- 2
- 3 NEW SECTION. **Section 7. Collecting and reporting of data -- requirement for licensure --**
- 4 **confidentiality.** (1) The board shall collect information related to the physician and physician assistant workforce
- 5 in Montana in order to evaluate whether Montanans have access to health care services based on the location
- 6 where licensees are practicing, the medical specialties of the licensees, and the amount of time that licensees
- 7 devote to patient care.
- 8 (2) At the time an individual applies to obtain or renew a license under Title 37, chapter 20, or this
- 9 chapter, the board shall collect through electronic means information that includes at a minimum:
- 10 (a) the applicant's gender and date of birth;
- 11 (b) the applicant's employment and practice status, including but not limited to:
- 12 (i) active practices in Montana and other locations;
- 13 (ii) the area of practice, including areas of specialty;
- 14 (iii) the office, hospital, or clinical setting in which the applicant practices;
- 15 (c) the applicant's education, training, and specialty and subspecialty board certification;
- 16 (d) the locations where the applicant practices and the average number of hours the applicant works
- 17 each week providing patient care at each location;
- 18 (e) the average number of weeks the applicant worked during the past full year in the licensed
- 19 profession;
- 20 (f) the percentage of time the applicant spends engaged in direct patient care and in other activities,
- 21 including but not limited to teaching, research, and administration in the licensed profession; and
- 22 (g) other data as proposed to and approved by the board.
- 23 (3) The board may not approve an application for a license or a renewal of a license for an applicant who
- 24 fails to provide information as required under this section.
- 25 (4) The board shall report the information collected under this section to:
- 26 (a) the department of public health and human services provided for in 2-15-2201; and
- 27 (b) Montana professional associations representing physicians and physician assistants.
- 28 (5) (a) Except as provided in subsection (5)(b), the board may not release personally identifiable data
- 29 collected under this section for any person licensed by the board.
- 30 (b) The provisions of subsection (5)(a) do not apply to the release of information to a state agency or a



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1 Montana medical professional association for state program, workforce, or health planning purposes.

2

3 **NEW SECTION. Section 8. Health care workforce database -- sharing and use of data.** (1) Subject
4 to available funding, the department of public health and human services may create and maintain a database
5 of health care workforce information collected by the board. The board shall provide the department of public
6 health and human services with information collected pursuant to [sections 6 through 8] for the database.

7 (2) The department of public health and human services may contract or enter into other agreements
8 with a private or public entity to:

9 (a) establish and maintain the database;

10 (b) analyze data contained in the database;

11 (c) develop reports to be used by the legislature, the governor, and the public related to health care
12 workforce needs; and

13 (d) perform other activities to carry out the purposes of [sections 6 through 8].

14 (3) The department of public health and human services may seek federal and private funds to create
15 and maintain the database.

16

17 **NEW SECTION. Section 9. Benefit plan for medicaid expansion population -- copayments and**
18 **deductibles -- options for administration.** (1) In providing medical services to individuals eligible for the
19 Montana medicaid program pursuant to 53-6-131(1)(h), the department shall:

20 (a) use as the benchmark plan allowed for under 42 U.S.C. 1936u-7(b)(1)(D) the essential health benefit
21 that is selected by:

22 (i) the legislature; or

23 (ii) the secretary of the U.S. department of health and human services pursuant to 42 U.S.C. 18022 and
24 related federal regulations;

25 (b) establish cost-sharing requirements for recipients as allowed by federal law and regulations;

26 (c) pursue options for contracting with a private vendor to provide or pay for medical services, including
27 but not limited to:

28 (i) use of a third-party administrator to operate the program;

29 (ii) use of a capitated payment model instead of a fee-for-service payment model for some health care
30 providers or services, including a predetermined bundled payment for specific health conditions or time periods;



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1 (iii) use of medicaid funds to purchase a qualified health plan as defined in 42 U.S.C. 18021(a); and
2 (iv) offering incentives that would allow individuals to obtain insurance coverage through the health
3 exchange.

4 (2) The department shall apply to the centers for medicare and medicaid services for any waivers
5 necessary to contract for services or to use medicaid funds as provided in subsection (1)(c).

6 (3) The department shall report the following information to the children, families, health, and human
7 services interim committee no later than August 15 of each year:

- 8 (a) the number of individuals who were determined eligible for medicaid pursuant to 53-6-131(1)(h);
9 (b) the average cost of medical services provided to those individuals;
10 (c) the average length of time the individuals remained eligible for medical assistance under this section;
11 (d) the total cost of providing services under this section, including related administrative costs; and
12 (e) the status of efforts that the department has undertaken pursuant to subsection (1)(c) to contract for
13 providing or paying for medical services.

14

15 **NEW SECTION. Section 10. Education and outreach on insurance coverage options.** (1) The
16 department shall undertake activities to increase public awareness of and knowledge about the options for
17 obtaining health insurance coverage, including but not limited to the expansion of the medicaid program, the
18 availability of tax credits for purchasing insurance, and the ways in which the health exchange may be used to
19 review and decide on insurance options.

20 (2) The department shall report on the activities planned and undertaken as part of the outreach and
21 education effort at:

- 22 (a) each meeting of the advisory committee provided for in [section 4]; and
23 (b) at least twice a year to the children, families, health, and human services interim committee.

24

25 **NEW SECTION. Section 11. Management of medicaid program.** In order to ensure that medical
26 assistance under this part is provided in an efficient and effective manner, the department shall strengthen
27 existing programs that manage the way in which recipients obtain approval for medical services and shall
28 establish additional programs designed to reduce costs and improve medical outcomes for recipients. The efforts
29 may include but are not limited to:

- 30 (1) establishing by rule requirements that are designed to strengthen the relationship between physicians



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- 1 and recipients who are enrolled in existing primary care case management programs;
- 2 (2) requiring recipients enrolled in a primary care case management program to see the physician
3 responsible for their care before receiving services other than emergency care;
- 4 (3) strengthening data-sharing arrangements with providers in order to reduce inappropriate use of
5 emergency room services and overuse of other services;
- 6 (4) creating a patient-centered medical home model for recipients in which providers receive an
7 enhanced reimbursement for closely monitoring and managing a recipient's medical condition;
- 8 (5) expanding to additional recipients any existing programs in which case managers and providers work
9 with recipients with high-risk medical conditions to provide preventive care and advice and to make referrals for
10 medical services;
- 11 (6) requiring a recipient to enroll in a program offering pain management services if the recipient is
12 identified as using narcotic prescription drugs at a substantially higher level than indicated by medical need;
- 13 (7) reviewing current care management programs to evaluate and improve their effectiveness;
- 14 (8) providing incentives as allowed by federal law and regulation to recipients who are identified by their
15 health care providers as complying with established preventive care and wellness standards that may reduce the
16 overall costs of health care provided to recipients; and
- 17 (9) submitting to the children, families, health, and human services interim committee any proposals
18 developed under this section for review and recommendation by the committee before implementation of the
19 proposal.

20
21 **NEW SECTION. Section 12. Deposit of unexpended medicaid funds.** The department shall deposit
22 into the medicaid expansion mitigation account provided for in [section 13] any general fund appropriated for
23 medicaid services that is unexpended 12 months after the close of the fiscal year for which it was appropriated.
24

25 **NEW SECTION. Section 13. Medicaid expansion mitigation account -- report.** (1) There is an
26 account in the state special revenue fund for the deposit of:

- 27 (a) any general fund appropriated for medicaid services that is unexpended 12 months after the close
28 of the fiscal year for which it was appropriated; and
- 29 (b) money transferred from the general fund and the state special revenue fund that is the equivalent
30 of the:



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1 (i) reduction in state expenditures for health care services that occurs because the Montana medicaid
2 program is expanded to provide coverage to individuals eligible pursuant to Public Law 111-148 and Public Law
3 111-152; and

4 (ii) amount of general fund replaced by receipt of the enhanced federal medical assistance percentage
5 provided pursuant to 42 U.S.C. 1397ee(b) for the children's health insurance program.

6 (2) The department may accept contributions, gifts, and grants for deposit into the account and for use
7 as provided in subsection (3).

8 (3) Money in the account must be used to pay the state share of expenditures for medical services for
9 recipients who are eligible for medicaid pursuant to Public Law 111-148 and Public Law 111-152. Money may
10 not be spent from the account before January 1, 2017.

11 (4) The department shall identify the reductions in expenditures that occurred in the following programs
12 because the medicaid program was expanded to individuals eligible pursuant to Public Law 111-148 and Public
13 Law 111-152:

14 (a) the Montana comprehensive health association plan provided for in Title 33, chapter 22, part 15;

15 (b) the small business health insurance purchasing pool provided for in Title 33, chapter 22, part 20;

16 (c) services offered under the state medicaid program provided for in this part to:

17 (i) pregnant women;

18 (ii) individuals with breast or cervical cancer;

19 (iii) individuals undergoing chemical dependency and substance abuse treatment; and

20 (iv) any other individual who:

21 (A) is not enrolled in medicaid because the individual is able to obtain insurance through the health
22 exchange; or

23 (B) is eligible for medicaid and no longer obtaining services from a program paid for with general fund
24 money;

25 (d) the mental health services program provided for in 53-21-702;

26 (e) health care services for individuals who have been ordered by a court of competent jurisdiction into
27 a correctional facility or program as described in 53-1-202 when the health care services are provided outside
28 of a correctional facility and paid for by the medicaid program rather than the general fund; and

29 (f) other sources as identified by the department.

30 (5) No later than January 1 of each odd-numbered year, the department shall report to the legislature



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1 on:

2 (a) the reductions identified pursuant to subsection (4); and

3 (b) the amount of federal funds the state received that are attributable to the enhanced federal medical
4 assistance percentage provided pursuant to 42 U.S.C. 1397ee(b) for the children's health insurance program.

5

6 **Section 14.** Section 37-8-202, MCA, is amended to read:

7 **"37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall:

8 (a) meet annually and elect from among the members a president and a secretary;

9 (b) hold other meetings when necessary to transact its business;

10 (c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

11 (d) provide for surveys of schools at times the board considers necessary;

12 (e) approve programs that meet the requirements of this chapter and of the board;

13 (f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or
14 removal of schools of nursing from the approved list;

15 (g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses
16 for prosecutions.

17 (h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses.
18 If considered appropriate for an advanced practice registered nurse who applies to the board for authorization,
19 prescriptive authority must be granted.

20 (i) adopt rules to define criteria for the recognition of registered nurses who are certified through a
21 nationally recognized professional nursing organization as registered nurse first assistants; ~~and~~

22 (j) establish a medical assistance program to assist licensed nurses who are found to be physically or
23 mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug
24 or substance or by mental illness or chronic physical illness. The program must provide for assistance to
25 licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward
26 rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical
27 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll
28 in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified
29 treatment program outside the state unless the board finds that there is no qualified treatment program in this
30 state. For purposes of funding this medical assistance program, the board shall adjust the renewal fee to be



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1 commensurate with the cost of the program.

2 (k) pursuant to rules adopted by the board, periodically collect workforce data for the purposes of
3 creating a statewide strategy for promoting efforts to develop a nursing workforce that will best meet the health
4 care needs of Montanans. Except as otherwise provided by law, the data collected may not be disclosed in a
5 manner that reveals individually identifiable information.

6 (2) The board may:

7 (a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate
8 endorsement of licenses;

9 (b) define the educational requirements and other qualifications applicable to recognition of advanced
10 practice registered nurses. Advanced practice registered nurses are nurses who must have additional
11 professional education beyond the basic nursing degree required of a registered nurse. Additional education must
12 be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the
13 process of being certified by a certifying body for advanced practice registered nurses. Advanced practice
14 registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

15 (c) establish qualifications for licensure of medication aides, including but not limited to educational
16 requirements. The board may define levels of licensure of medication aides consistent with educational
17 qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the
18 type of drugs that are allowed to be administered and the method of administration.

19 (d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

20 (e) adopt rules necessary to administer this chapter; and

21 (f) fund additional staff, hired by the department, to administer the provisions of this chapter."

22

23 **Section 15.** Section 37-8-204, MCA, is amended to read:

24 **"37-8-204. Executive director.** (1) The department shall hire an executive director to provide services
25 to the board in connection with the board's duties of:

26 (a) prescribing curricula and standards for nursing schools and making surveys of and approving schools
27 and courses;

28 (b) evaluating and approving courses for affiliation of student nurses; ~~and~~

29 (c) reviewing qualifications of applicants for licensure; and

30 (d) collecting workforce data.



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- 1 (2) The department shall hire as the executive director an individual who:
- 2 (a) is a graduate of an approved school of nursing and who has at least a master's degree with
- 3 postgraduate courses in nursing;
- 4 (b) is licensed as a registered professional nurse in Montana; and
- 5 (c) has experience in teaching or administration in an approved school of nursing and who has
- 6 completed at least 3 years in the clinical practice of nursing."

7

8 **Section 16.** Section 53-6-131, MCA, is amended to read:

9 **"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may

10 be granted to a person who is determined by the department of public health and human services, in its

11 discretion, to be eligible as follows:

12 (a) The person receives or is considered to be receiving supplemental security income benefits under

13 Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess

14 of the applicable medical assistance limits.

15 (b) The person would be eligible for assistance under the program described in subsection (1)(a) if that

16 person were to apply for that assistance.

17 (c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the

18 person would be receiving assistance under the program in subsection (1)(a).

19 (d) The person is under 21 years of age and in foster care under the supervision of the state or was in

20 foster care under the supervision of the state and has been adopted as a child with special needs.

21 (e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

22 (i) the person's income does not exceed the income level specified for federally aided categories of

23 assistance and the person's resources are within the resource standards of the federal supplemental security

24 income program; or

25 (ii) the person, while having income greater than the medically needy income level specified for federally

26 aided categories of assistance:

27 (A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically

28 needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the

29 department the amount by which the person's income exceeds the medically needy income level specified for

30 federally aided categories of assistance; and



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1 (B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the
2 person is aged, blind, or disabled, has resources that do not exceed the resource standards of the federal
3 supplemental security income program; or

4 (II) in the case of a person who meets the nonfinancial criteria for medical assistance because the person
5 is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not exceed the
6 resource standards adopted by the department.

7 (f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).

8 (g) The person is under 19 years of age and lives with a family having a combined income that does not
9 exceed 185% of the federal poverty level. The department may establish lower income levels to the extent
10 necessary to maximize federal matching funds provided for in 53-4-1104.

11 (h) The person meets the eligibility requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) as enacted by
12 Public Law 111-148, Public Law 111-152, and federal regulations implementing those laws.

13 (2) The department may establish income and resource limitations. Limitations of income and resources
14 must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility
15 resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided
16 for in 53-4-1104.

17 (3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for
18 medicaid-eligible persons participating in the medicare program and may, within the discretion of the department,
19 pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible
20 person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus
21 Budget Reconciliation Act of 1989, Public Law 101-239, who:

22 (a) has income that does not exceed income standards as may be required by the Social Security Act;
23 and

24 (b) has resources that do not exceed standards that the department determines reasonable for purposes
25 of the program.

26 (4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and
27 similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

28 (5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department
29 of health and human services, the department of public health and human services may grant eligibility for basic
30 medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined



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1 in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931 medicaid program.
2 A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C.
3 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

4 (6) The department, under the Montana medicaid program, may provide, if a waiver is not available from
5 the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42
6 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may
7 be designated by the act for receipt of assistance.

8 (7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants
9 and pregnant women whose family income does not exceed income standards adopted by the department that
10 comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i) and whose family resources do not exceed standards
11 that the department determines reasonable for purposes of the program.

12 (8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit
13 corporation that uses donated funds to provide basic preventive and primary health care medical benefits to
14 children whose families are ineligible for the Montana medicaid program and who are ineligible for any other
15 health care coverage, are under 19 years of age, and are enrolled in school if of school age.

16 (9) A person described in subsection (7) must be provided continuous eligibility for medical assistance,
17 as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

18 (10) Full medical assistance under the Montana medicaid program may be granted to an individual during
19 the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous
20 condition of the breast or cervix, if the individual:

21 (a) has been screened for breast and cervical cancer under the Montana breast and cervical health
22 program funded by the centers for disease control and prevention program established under Title XV of the
23 Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

24 (b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or
25 cervix;

26 (c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

27 (d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and
28 (e) has not attained 65 years of age.

29 (11) Subject to the limitation in 53-6-195, the department shall provide medicaid coverage to workers with
30 disabilities as provided in 53-6-195 and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and (r)(2) and 42



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1 U.S.C. 1396o.

2 (12) The department shall establish medicaid eligibility consistent with the modified adjusted gross
3 income criteria allowed by federal regulations."

4
5 **Section 17.** Section 53-6-132, MCA, is amended to read:

6 **"53-6-132. Application for assistance ~~exception.~~** (1) ~~Subject to subsection (2), application for~~
7 ~~assistance under this part may be made in any local office of public assistance. The department shall adopt~~
8 ~~medicaid eligibility procedures and criteria that are consistent with federal requirements.~~

9 (2) The An application for medical assistance under this part must be presented in the manner and on
10 the form prescribed by the department.

11 (3) All individuals wishing to apply must have the opportunity to do so.

12 ~~(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than~~
13 ~~the local office of public assistance to determine eligibility for medicaid managed care services.~~

14 (4) The department may participate with federal and state programs and agencies in the coordination of
15 procedures and criteria for eligibility determination, including use of interactive electronic networks and databases
16 and other appropriate measures."

17
18 **Section 18.** Section 53-6-133, MCA, is amended to read:

19 **"53-6-133. Eligibility determination.** (1) ~~The local office of public assistance shall promptly determine~~
20 ~~the eligibility of each applicant under this part must be determined~~ in accordance with the rules of the department.
21 Each applicant must be informed of the right to a fair hearing ~~appeal a determination~~ and of the confidential nature
22 of the information given. ~~The department, through the local office of public assistance, shall, after the hearing,~~
23 ~~determine whether or not~~ if the applicant is eligible for assistance under this part, ~~and~~ aid must be furnished
24 promptly ~~to eligible persons.~~ Each applicant must receive written notice of the decision concerning the applicant's
25 application; and the right of appeal ~~is secured to the applicant under the procedures of 53-2-606.~~

26 (2) The local office of public assistance and the department may accept the federal social security
27 administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act,
28 as qualifying the eligible individuals to receive medical assistance under this part."

29
30 **Section 19.** Section 53-6-155, MCA, is amended to read:



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1 **"53-6-155. Definitions.** As used in this part, unless expressly provided otherwise, the following
2 definitions apply:

3 (1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of
4 and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance
5 program when the disregard or failure results or may result in an incorrect determination that a person is eligible
6 for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider
7 is not entitled.

8 (2) "Applicant" means a person:

9 (a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on
10 the person's own behalf or on behalf of another person; or

11 (b) on whose behalf an application has been submitted.

12 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the
13 medicaid program.

14 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that
15 is used to claim specific services or items as payable or reimbursable under the medicaid program or that states
16 income, expense, or other information that is or may be used to determine entitlement to or the rate of payment
17 under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

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

19 (6) "Document" means any application, claim, form, report, record, writing, or correspondence, whether
20 in written, electronic, magnetic, or other form.

21 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving purposeful
22 or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or benefits
23 to which the applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or
24 omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

25 ~~(8) "Health exchange" means the American health benefit exchange provided for in Public Law 111-148~~
26 ~~and Public Law 111-152.~~

27 ~~(9)~~ "Medicaid" means the Montana medical assistance program established under Title 53, chapter
28 6.

29 ~~(10)~~ "Medicaid agency" means any agency or entity of state, county, or local government that
30 administers any part of the medicaid program, whether under direct statutory authority or under contract with an



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1 authorized agency of the state or federal government. The term includes but is not limited to the department, the
2 department of corrections, local offices of public assistance, and other local and state agencies and their agents,
3 contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment,
4 utilization review, case management, provider certification, investigation, or other administration of the medicaid
5 program.

6 ~~((10))~~(11) "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful
7 use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the
8 patient's designated representative. Misappropriation of patient property includes but is not limited to any conduct
9 with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

10 ~~((11))~~(12) "Patient abuse" means the willful infliction of physical or mental injury of a patient or
11 unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental
12 anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would
13 constitute a criminal offense under Title 45, chapter 5.

14 ~~((12))~~(13) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to
15 provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when
16 an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient
17 neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense
18 under 45-5-208.

19 ~~((13))~~(14) "Provider" means an individual, company, partnership, corporation, institution, facility, or other
20 entity or business association that has enrolled or applied to enroll as a provider of services or items under the
21 medical assistance program established under this part.

22 ~~((14))~~(15) "Recipient" means a person:

23 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not
24 the person actually has received any benefits; or

25 (b) who actually receives medicaid benefits, whether or not determined eligible.

26 ~~((15))~~(16) (a) "Records" means medical, professional, business, or financial information and documents,
27 whether in written, electronic, magnetic, microfilm, or other form:

28 (i) pertaining to the provision of treatment, care, services, or items to a recipient;

29 (ii) pertaining to the income and expenses of the provider; or

30 (iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or



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1 reimbursement under the medicaid program.

2 (b) The term includes all records and documents, regardless of whether the records are required by
3 medicaid laws, regulations, rules, or policies to be made and maintained by the provider."
4

5 NEW SECTION. Section 20. Codification instruction. (1) [Sections 1 through 5] are intended to be
6 codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, part 1, apply to
7 [sections 1 through 5].

8 (2) [Sections 6 through 8] are intended to be codified as an integral part of Title 37, chapter 3, and the
9 provisions of Title 37, chapter 3, apply to [sections 6 through 8].

10 (3) [Sections 9 through 13] are intended to be codified as an integral part of Title 53, chapter 6, part 1,
11 and the provisions of Title 53, chapter 6, part 1, apply to [sections 9 through 13].
12

13 COORDINATION SECTION. Section 21. Coordination instruction. If both House Bill No. 2 and [this
14 act] are passed and approved and if House Bill No. 2 contains any appropriations designated as medicaid
15 expansion savings, then the appropriations in House Bill No. 2 that are designated as medicaid expansion
16 savings must be transferred to the special revenue account provided for in [section 13 of this act].
17

18 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
20 the part remains in effect in all valid applications that are severable from the invalid applications.
21

22 NEW SECTION. Section 23. Effective dates. (1) Except as provided in subsection (2), [this act] is
23 effective October 1, 2013.

24 (2) [Sections 1 through 13, 20 through 22, 24, and 25] and this section are effective July 1, 2013.
25

26 NEW SECTION. Section 24. Contingent termination. (1) [Sections 9, 12, and 16(1)(h)] terminate on
27 the date that the federal medical assistance percentage for medical services provided to individuals eligible for
28 medicaid pursuant to 53-6-131(1)(h) is set below the level provided for in 42 U.S.C. 1396d(y) on [the effective
29 date of this act].

30 (2) [Section 13] terminates 15 months after the contingency provided for in subsection (1) of this section



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1 occurs.

2 (3) The director of the department of public health and human services shall certify to the governor the
3 occurrence of the contingency. The governor shall transmit a copy of the certification to the code commissioner.

4

5 NEW SECTION. Section 25. Termination. (1) Except as provided in [section 24], [sections 1 through
6 4, 9 through 13, 16(1)(h), and 19] terminate June 30, 2017.

7 (2) [Section 5] terminates June 30, 2019.

8

- END -

House Bill 257

63rd Legislature

HB0257.02

1

HOUSE BILL NO. 257

2

INTRODUCED BY WILSON, COFFIN, HILL, MACDONALD, O'HARA

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO BICYCLES; REDEFINING
"BICYCLE"; CLARIFYING THE RIGHT-OF-WAY FOR A BICYCLE; UPDATING BICYCLE EQUIPMENT
REQUIREMENTS; AND AMENDING SECTIONS 61-8-102, 61-8-320, 61-8-604, ~~61-8-605~~, 61-8-606, AND
61-8-607, MCA."

8

9

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

10

11

Section 1. Section 61-8-102, MCA, is amended to read:

12

"61-8-102. Uniformity of interpretation -- definitions. (1) Interpretation of this chapter in this state must
be as consistent as possible with the interpretation of similar laws in other states.

14

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

15

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title
7, chapter 33, an ambulance, and an emergency vehicle designated or authorized by the department.

17

(b) "Bicycle" means:

18

~~(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem
wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position;
except scooters and similar devices; or~~

21

~~———— (ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an
independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the
maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the
number of chambers in the power source. The power source may not be capable of propelling the device,
unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must
be equipped with a power drive system that functions directly or automatically only and does not require clutching
or shifting by the operator after the drive system is engaged~~

28

~~(i) a vehicle propelled by foot or hand power regardless of the number of wheels in contact with the
ground, except for a wheelchair or other vehicle designed specifically for use by a physically disabled person or
a device primarily intended for children 6 years of age or younger; or~~

30



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Authorized Print Version - HB 257

HOUSE BILL 257

63rd Legislature

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1 (ii) A VEHICLE EQUIPPED WITH TWO OR THREE WHEELS, FOOT PEDALS TO PERMIT MUSCULAR PROPULSION, AND
2 AN INDEPENDENT POWER SOURCE PROVIDING A MAXIMUM OF 2 BRAKE HORSEPOWER. IF A COMBUSTION ENGINE IS USED,
3 THE MAXIMUM PISTON OR ROTOR DISPLACEMENT MAY NOT EXCEED 3.05 CUBIC INCHES, 50 CUBIC CENTIMETERS,
4 REGARDLESS OF THE NUMBER OF CHAMBERS IN THE POWER SOURCE. THE POWER SOURCE MAY NOT BE CAPABLE OF
5 PROPELLING THE DEVICE, UNASSISTED, AT A SPEED EXCEEDING 30 MILES AN HOUR, 48.28 KILOMETERS AN HOUR, ON A
6 LEVEL SURFACE. THE DEVICE MUST BE EQUIPPED WITH A POWER DRIVE SYSTEM THAT FUNCTIONS DIRECTLY OR
7 AUTOMATICALLY ONLY AND DOES NOT REQUIRE CLUTCHING OR SHIFTING BY THE OPERATOR AFTER THE DRIVE SYSTEM
8 IS ENGAGED.

9 (c) "Business district" means the territory contiguous to and including a highway when within any 600
10 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to
11 hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on
12 one side or 300 feet collectively on both sides of the highway.

13 (d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or
14 occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or
15 roadway except at the points and in the manner as determined by the public authority having jurisdiction over the
16 highway, street, or roadway.

17 (e) "Crosswalk" means:

18 (i) that part of a roadway at an intersection included within the connections of the lateral lines of the
19 sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges
20 of the traversable roadway;

21 (ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing
22 by lines or other markings on the surface.

23 (f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon
24 a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person,
25 except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic
26 hazard, must be equipped as required by the rules of the department of transportation.

27 (g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later
28 dedicated to public use.

29 (h) "Ignition interlock device" means ignition equipment that:

30 (i) analyzes the breath to determine blood alcohol concentration;



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- 1 (ii) is approved by the department pursuant to 61-8-441; and
- 2 (iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific
- 3 amount of an alcoholic beverage.
- 4 (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb
- 5 lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one
- 6 another at or approximately at right angles or the area within which vehicles traveling upon different highways
- 7 joining at any other angle may come in conflict.
- 8 (ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway
- 9 of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting
- 10 highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways
- 11 must be regarded as a separate intersection.
- 12 (j) "Local authorities" means every county, municipal, and other local board or body having authority to
- 13 enact laws relating to traffic under the constitution and laws of this state.
- 14 (k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination
- 15 of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but
- 16 is not limited to the vehicles listed in 61-1-101(9)(b).
- 17 (l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with
- 18 this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of
- 19 regulating, warning, or guiding traffic.
- 20 (m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled
- 21 wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically
- 22 disabled person.
- 23 (n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.
- 24 (o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel
- 25 by the owner and those having express or implied permission from the owner, but not by other persons.
- 26 (p) "Residence district" means the territory contiguous to and including a highway not comprising a
- 27 business district when the property on the highway for a distance of 300 feet or more is primarily improved with
- 28 residences or residences and buildings in use for business.
- 29 (q) "Right-of-way" means the privilege of the immediate use of the roadway.
- 30 (r) "School bus" has the meaning provided in 20-10-101.



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1 (s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a
2 roadway and the adjacent property lines and that is intended for use by pedestrians.

3 (t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by
4 which traffic is alternately directed to stop and to proceed.

5 (u) "Urban district" means the territory contiguous to and including any street that is built up with
6 structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a
7 distance of one-fourth mile or more."
8

9 **Section 2.** Section 61-8-320, MCA, is amended to read:

10 **"61-8-320. Right-of-way for bicycles.** (1) The operator of a motor vehicle may not:

11 (a) intentionally interfere with the movement of a person who is lawfully riding a bicycle; ~~or~~

12 (b) overtake and pass a person riding a bicycle unless the operator of the motor vehicle can do so safely
13 without endangering the person riding the bicycle; ~~or~~

14 (c) pass closer than 5 feet to a person riding a bicycle and shall maintain that clearance until safely clear
15 of the overtaken bicycle. If driving on a divided highway as described in 61-8-330, the operator of a motor vehicle
16 may cross the double yellow lines, if it is safe to do so, in order to pass a bicycle while maintaining at least 5 feet
17 of clearance.

18 (2) The operator of a motor vehicle shall yield the right-of-way to a person who is riding a bicycle within
19 a designated bicycle lane."
20

21 **Section 3.** Section 61-8-604, MCA, is amended to read:

22 **"61-8-604. Clinging to vehicles.** A person riding upon any bicycle, coaster, roller skates, sled, or toy
23 vehicle may not attach the conveyance or be attached to any vehicle upon a roadway, but a bicycle trailer ~~or~~
24 ~~bicycle semitrailer~~ may be attached to a bicycle if ~~that the trailer or semitrailer~~ has been designed for attachment."
25

26 ~~**Section 4.** Section 61-8-605, MCA, is amended to read:~~

27 ~~**"61-8-605. Riding on roadways.** (1) As used in this section:~~

28 ~~(a) "laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular~~
29 ~~traffic; and~~

30 ~~(b) "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel;~~



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- 1 including the paved shoulder.
- 2 ~~_____ (2) A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and~~
3 ~~place and under the conditions then existing shall ride as near to the right side of the roadway as practicable~~
4 ~~except when:~~
- 5 ~~_____ (a) overtaking and passing another vehicle proceeding in the same direction;~~
6 ~~_____ (b) preparing for a left turn at an intersection or into a private road or driveway; or~~
7 ~~_____ (c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway;~~
8 ~~including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard,~~
9 ~~or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.~~
- 10 ~~_____ (3) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride~~
11 ~~as close to the left side of the roadway as practicable.~~
- 12 ~~_____ (4) Persons riding bicycles upon a roadway shall ride in single file except when:~~
- 13 ~~_____ (a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;~~
14 ~~_____ (b) overtaking and passing another bicycle;~~
15 ~~_____ (c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or~~
16 ~~_____ (d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case~~
17 ~~the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than~~
18 ~~they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.~~
- 19 ~~_____ (5) A bicycle, as defined in 61-8-102(2)(b)(ii), is excluded from the provisions of subsections (2) and (3)."~~

20
21 **Section 4.** Section 61-8-606, MCA, is amended to read:

22 "**61-8-606. Carrying articles.** ~~No~~ A person operating a bicycle ~~shall~~ may not carry any package, bundle,
23 or article ~~which~~ that prevents the ~~driver~~ person from keeping at least one hand ~~upon~~ on the ~~handle-bars~~
24 handlebars."

25
26 **Section 5.** Section 61-8-607, MCA, is amended to read:

27 "**61-8-607. Lamps and other equipment on bicycles** **Bicycle equipment.** (1) Every person operating
28 a bicycle when in use at nighttime shall ~~be equipped with a lamp on the~~ display a front light which shall emit that
29 emits a white light visible from a distance of at least 500 feet ~~to the front~~ and a rear light that emits a flashing or
30 steady red light visible from a distance of at least 1,000 feet. Lights may be affixed to the bicycle or to the person



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1 ~~operating the bicycle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in~~
2 ~~addition to rear-facing reflectors required by this section:~~

3 ~~————(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing~~
4 ~~reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall~~
5 ~~be mounted on the front and back of each pedal:~~

6 ~~————(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroreflective sidewalls~~
7 ~~or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 millimeters (3~~
8 ~~inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel~~
9 ~~shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red:~~

10 ~~————(4) Reflectors required by this section shall be of a type approved by the department.~~

11 ~~(5)(2) Every bicycle shall must be equipped with a brake which that will enable the operator to make the~~
12 ~~braked wheels skid stop the bicycle within 15 feet FROM A SPEED OF 10 MILES AN HOUR on dry, level, clean~~
13 ~~pavement.~~

14 ~~————(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended~~
15 ~~not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange~~
16 ~~in color:"~~

17 ~~- END -~~



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Acknowledgements

I thank most of all the voters of Livingston, Montana for giving me the opportunity to serve them in the 2013 session.

I compiled this book for my constituents, but as time passed so quickly between the end of session and the next election, I have often feared that the book would not be printed and bound before voters had an opportunity to have a glimpse into the workings of our State Legislature. In this quick turnaround I'm afraid I have omitted much. Still, I hope it is a worthwhile glimpse into the work we do in Helena.

I am also grateful to my son, Caen, who is the reason I want to make the world a better place. His patience over the past two years has been tremendous for a young boy. I hope I have made him proud and will continue to make his world a little brighter, stronger and smarter.

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