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Montana Legislative Summary, 1959

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Montana Legislature Summary, 1959

This article is intended to summarize the more significant legislation passed by the 1959 Montana Legislative Assembly. The following sections have been written by the Law School faculty, based on bills selected by the Law Review staff and Advisor. Not all of the legislation enacted has been commented on, but the bills believed to be the most important permanent laws have been included. Appropriation bills and other similarly temporary legislation have not generally been noted. Statutes noted are identified both by the chapter of the 1959 session laws and by their House or Senate bill numbers.

The new enactments are discussed under the following major headings:

CIVIL PROCEDURE
COMMERCIAL TRANSACTIONS
CORPORATIONS
CRIMINAL LAW
CRIMINAL LAW ADMINISTRATION
DOMESTIC RELATIONS
FISH AND GAME
HIGHWAYS
INSURANCE
THE JUDICIARY
LABOR LAW

MUNICIPAL CORPORATIONS
PERPETUITIES; PENSION & PROFIT-SHARING PLANS
PERSONAL PROPERTY
PUBLIC HEALTH
SCHOOLS
STATE AND LOCAL GOVERNMENT
TAXATION
TORTS
UNIFORM AND MODEL LAWS
WILLS
WORKMEN'S COMPENSATION

CIVIL PROCEDURE

New Rules

The first step was taken toward the adoption in Montana of rules of civil procedure patterned after the Federal Rules. The legislation contains a rather curious blending of legislative power with the rule making power of the Supreme Court of Montana.

Chapter 132 (Sen. Sub. for H.B. 31) provides that the Supreme Court shall appoint a Commission of eleven persons, who are to serve without compensation, to study and prepare Rules of Civil Procedure for the State of Montana. The Commission is to be composed of the Chief Justice of Montana, or an Associate Justice designated by the Chief Justice; three judges from the district courts of the state, one of whom must be President of the Montana Judges’ Association and the others from a list of judges suggested by the Judges’ Association; seven lawyers, one of whom must be President of the Montana Bar Association and the others from a list submitted by the President of the Montana Bar Association. Five of the lawyers must be members of the Montana Bar Association, and all lawyers designated must be actively practicing law in Montana or members of the faculty of Montana’s law schools.
the Law School of Montana State University. The Supreme Court is given power to provide for terms of office and changes in the personnel of the Commission.¹

Proposed rules prepared by the Commission are to be distributed to the bench and bar of the state for their consideration and suggestions. Within six months thereafter a final tentative draft must be submitted to the Supreme Court for its approval, and the court must give notice of hearing by mailing to all district judges and attorneys licensed to practice in the Montana courts. The hearing, at which all interested persons and organizations may appear, must be held within ninety days after submission by the Commission.

Approval by the Supreme Court, according to the legislation, is not sufficient. Any rules promulgated only become effective upon adoption by the legislature.

The bill provides for the employment by the Commission of secretarial help and research assistance, and that members of the Commission shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings. However, the appropriation of $8,500 which was provided in the bill as introduced was stricken and a separate appropriation of $3,000 was made.² The inadequacy of this appropriation is reflected in the following extract from the Order of the Supreme Court:

It further appearing that the amount appropriated by the legislature for the work of the Commission may be necessary for printing and distributing copies of the suggested rules and by reason thereof the Commissioners shall serve without reimbursement for travel or other expenses incurred in the discharge of their duties, including attendance at meetings until the further order of the court.

If the purpose of the proposed legislation is accomplished, Montana will join the trend which has resulted in approximately one-third of the states adopting rules patterned after the Federal Rules of Civil Procedure.

Stay Bonds

The provision of the statute with respect to stay bonds on appeals from judgments or orders directing the payment of money³ has been amended. Under chapter 75 (H.B. 198) the undertaking will no longer have to be in double the amount named in the judgment or order. Rather the undertaking must be in the amount of the judgment or order, plus interest at the legal rate for two years, and estimated costs on appeal, in an amount to be fixed by the trial court.

¹The Supreme Court has appointed the following persons as members of the Commission, each for a term of two years from May 1, 1959: Hon. James T. Harrison, Hon. Philip C. Duncan, Hon. Lester H. Loble, Hon. Guy C. Derry, Franklin S. Longan, Esq., Cale J. Crowley, Esq., Gene A. Picotte, Esq., A. G. Shone, Esq.
²H.B. 528.
³R.C.M. 1947, § 93-8007.
**Attendance of Witnesses**

Chapter 154 (S.B. 117) repeals the statute which provides that a witness may not be compelled to attend a trial if he resides in a county other than that where a trial is had and more than 100 miles from where it takes place.

**Terms of Court**

Chapter 144 (H.B. 259) amends the statutes with respect to terms of district court to give greater flexibility and authority to the court. The amendments do away with the requirement that sessions of court be held at the county seat. The provision that juries "must be called on the first Monday of every alternate month, if the judge so directs, and oftener if the public business requires," has been replaced by the simple provision that they must be called "by the judge as often as the public business requires."

Orders fixing the times at which terms are to be held in districts where two or more counties are united are required to be filed in the office of the clerk of the district court in each county, but the present requirement of publication of such orders is eliminated. The amendments also eliminate the requirement that such orders be made within ten days after the first day of December each year to remain in effect without change for the next year. The amendments do not prescribe when such orders shall be made and merely provide that they shall remain in effect until further order of the judge. Further under the amendments, in districts where two or more counties are united causes may be tried and business transacted in any and all of the counties continuously and simultaneously without regard to the beginning or ending of terms, and the same judge may try causes and transact business simultaneously in more than one county.

**COMMERCIAL TRANSACTIONS**

**Consumer Loan Act**

Usury and the plight of the small loan debtor is not a new problem, but it has become more acute as society has become more urban and industrial. Montana has now joined the great majority of states which have some type of special legislation regulating the lending of small amounts of money.

The main provisions of the Montana Consumer Loan Act contained in Chapter 283 (Sub. H.B. 123) are as follows: All lenders who make a business of making loans of $1000 or less and who wish to avail themselves of the special interest rates must be licensed by the state. The law operates as an exception to the usury law and allows licensees to charge maximum interest rates which vary from 20% per year on the part of a loan not exceeding $300 to 12% per year on the part of a loan in excess of $500 but not exceeding $1000. In lieu of the 20%, on loans of $90 or less a licensee may charge $1 for each $5.00 and a period of at least 15 days must be allowed for the repayment of each $5.00. An additional charge of 5% may be made on any part of the loan past due, to be charged only once.

*Id. at § 93-1501-7, as amended by Laws of Montana 1949, ch. 113, § 1,*
*Id. at §§ 93-315, -316.*

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Also a charge may be made for actual fees paid a public official for filing, recording or releasing instruments securing the loan. All further charges either direct or indirect are prohibited.

Contract periods are limited to 21 months on loans of $300 or less, and 25 months on loans in excess of $300, and the loan contracts must provide for payment in installments.

Assignment of wages as security cannot exceed 10% of the wages, and such assignments must be in writing and signed by the borrower. Further, if the borrower is married the assignment must be signed by both husband and wife, unless they are living separate and apart. Insurance may be required only in connection with loans exceeding $300.

A borrower must be given a copy of the contract showing its terms clearly and distinctly.

The act creates the office of Consumer Loan Commissioner, who is the state bank examiner. Licensees are required to keep books and records as the Commissioner may require, and to make detailed reports to the Commissioner. The Commissioner is given power to investigate licensees, any person soliciting loans in amounts of $1000 or less, and any person whom the Commissioner has reason to believe is violating the act. He is required to make annual examinations of licensees.

The Commissioner is given power to suspend or revoke licenses for knowing violations of the act, to issue cease and desist orders, and to apply to the courts for injunctions and receivership.

Appeals to the district court may be taken from orders of the Commissioner, and the party appealing or the Commissioner may appeal from the district court.

Violations of the act are misdemeanors and loans in violation of it are void and uncollectable as to both interest and principal.

It should be noted that banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, pawnbrokers, and persons extending credit in connection with the sale of a commodity are exempt from the provisions of the act and are ineligible to become licensees under its provisions.

Retail Installment Sales

The great increase in retail installment credit in the United States has brought concern for the protection of consumers from unconscionable business practices. The trend is toward comprehensive retail installment legislation, such as was first adopted in Indiana in 1935. Chapter 282 (H.B. 89), the Montana Retail Installment Sales Act, is a statute of this kind.

The Montana legislation regulates retail installment selling and financing of goods, including motor vehicles. It vests supervisory powers in the superintendent of banks.

Persons engaging in the business of a sales finance company, except banks, trust companies and savings and loan associations authorized to do
business in the state, are required to obtain a license. The superintendent of banks is given power to investigate licensees and retail sellers.

Provisions requiring disclosure to the buyer of the terms of the transaction and his rights therein are fundamental. The contract must be in writing, in at least eight point type, with caveats in at least ten point bold type that he is not to sign before he has read or if the contract contains blank spaces, that he is entitled to a copy, and has a right to pay off in advance the full amount due and obtain a partial refund of the finance charge. If the contract is for a motor vehicle it must contain in at least ten point bold type a statement that liability insurance coverage is not included, if that is the case. These requirements are made meaningful by a further requirement that the seller deliver or mail to the buyer a copy of the contract, and by a provision that the buyer may rescind until the seller does so. Any acknowledgment by the buyer of delivery of a copy must be in at least ten point bold type and, if contained in the contract, must appear directly above the buyer's signature.

There are also provisions for documentary disclosures to the buyer which evidence the progress and completion of the payment obligation. The buyer must be given a written receipt for any payment when made in cash, and upon written request the buyer must be given a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

The act specifies what the contract must contain. Included in the required items are: (1) the cash price; (2) the amount of the down payment, and a description of any goods traded in; (3) the difference between items (1) and (2); (4) the amount for insurance and other benefits, specifying the types of coverage and benefits; (5) the amount of official fees; (6) the principal balance, defined as the sum of items (3), (4) and (5); (7) the amount of the finance charge; (8) the time balance, and the number of installments and the due date of each.

There are limitations as to insurance which not only relate to disclosure, by requiring the policy or certificate to be sent to the buyer, but which also relate to rate limitations, who may be insurers, and the kinds of insurance which may be included in the contract. If any insurance is cancelled or the premium adjusted, any refund of premium must be credited to the final maturing installment of the contract, except as applied toward similar insurance.

Rates and charges are controlled. Maximum permissible finance charges as to motor vehicles vary from 7% to 11% per year, depending upon the class to which the vehicle belongs. On services and goods other than motor vehicles the permissible finance charges vary from 7% to 11%, depending upon the amount of the principal balance. A minimum finance charge of $20.00 may be charged on any retail installment transaction. Additional charges which may be made by reason of the buyer's failure to meet the schedule of payments in the contract are limited.

Refinancing charges are also controlled. The seller is permitted to compute such a charge on the unpaid time balance by adding the cost of any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund.
which may be due the buyer for a prepayment. In the case of a motor vehicle, it may be reclassified by its year model at the time of the refinancing for the purpose of computing the charge. The maximum permissible finance rates also apply to refinancing.

Any waiver of the provisions of the act are unenforceable and void.

Three sanctions are prescribed. First, engaging in the business of a sales finance company without a license is a misdemeanor. Second, the superintendent of banks has the power, after hearing, to suspend or revoke licenses of persons engaged in the business of financing retail sales for violation of the act or fraud. Such an order is reviewable in the courts by certiorari. Third, any person violating a requirement as to the contract, a limitation upon finance charges, a provision for refunds on prepayments, or a provision with respect to refinancing, except as the result of accidental or bona fide error, is barred from recovering any finance, delinquency or collection charge.

Auction Sales

The provision of the Public Auction Law of 1955 for exemptions from the act of sales by individuals of new merchandise was amended by Chapter 225 (H.B. 221). The amendment strikes the limitation that the property was assessed personal property tax, but it limits the exemption to sales by individuals who maintain an established retail sales place of business in the county in which the sale is held.

Motor Vehicle Registration Renewal

The law respecting the renewal of registration of motor vehicles was amended by Chapter 100 (S.B. 37) to restrict the use of temporary windshield stickers. The amendment prohibits the sale or purchase of more than one sticker when the vehicle ownership has not changed. Also, the three day grace period from the date of purchase from a duly licensed dealer is for the purpose of making application for registration and obtaining registration plates, rather than for the purpose of making application for a sticker.

CORPORATIONS

Incorporation

Chapter 142 (H.B. 372) amends R.C.M. 1947, section 14-102, so as to expressly require that the articles of incorporation of a credit union be filed with the Secretary of State and in the local county clerk and recorder’s office. Although the existing law had provided that “credit unions shall be under the supervision of the State Examiner,” the present Act also requires that proposed articles of incorporation first be submitted to him for his approval, which must be given in writing, before the articles are filed. Since the old law assumed the filing of a credit union’s articles, without formally dealing with that step, the relevant provisions found in the general corporation code were applicable, prior to this amendment. However, whether intentionally or not, the present Act varies the general

provision for filing, by reversing the offices in which the original and the copy are filed. Though R.C.M. 1947, section 15-111, governing filing generally, requires filing of the original articles with the county clerk and recorder, and a certified copy thereof with the Secretary of State (who then issues the certificate of incorporation), under the new Act, a credit union’s articles are first filed with the Secretary of State and the certified copy filed with the county clerk and recorder at the principal place of business.

Stock Transfers

Chapter 136 (H.B. 469) intends to make clear and explicit the law measuring the liability of a corporation or its transferring agent, for transferring its stock on the demand of a fiduciary thereof, for frauds or deviations from his fiduciary duties where such transfer contributes to such fraud or deviation. However, it absolves the corporation or transferring agent of any liability therefor, except in the case of actual knowledge of the intended fraud, or “with knowledge of such facts that its or their participation of such registration or transfer amounts to bad faith.”

Taxation

In 1955, by appropriate amendment of its statutes regulating the state income tax, Montana committed itself to the rather unusual policy of adapting its income tax law so as to make many of its provisions identical with that of federal income tax law, thus permitting substantially the same tax base to be used for one as for the other. Chapter 122 (S.B. 126) was passed in further pursuance of that policy, with respect to “corporate income” regulations. It amends Chapter 15 of Title 84, R.C.M. 1947, by adding a new section thereto, numbered section 84-1501.1. Its purpose is to adopt essentially the same provisions for computing Montana taxes, as are contained in the now famous “Subchapter S” of the federal Internal Revenue Code, permitting certain classes of small business corporations to elect not to be taxed as corporations, but to have the income (or loss) reported directly by the shareholders as if the firm were a partnership, thus avoiding the notorious “double taxation” of corporate profits. Interestingly, though Chapter 15, Title 84, is entitled “licensing tax,” and so is applicable to certain income items to which standard income taxes are not applicable, the Montana legislature has seen fit to amend this section to implement their policy of paralleling the federal income tax law.

Chapter 264 (H.B. 303) increases from 3% to 5% the “license tax,” based on the net income derived from business done in Montana, and imposed both on domestic and foreign corporations, by amending R.C.M. 1947,

*Where applicable this provision would seem to give some relief to the “double double” taxation, which, though very common, is commented on adversely by Roland Renne, President of Montana State College, in Renne, The Government and Administration of Montana 139 (1958). Actually, many corporate profits may be subjected to a number of double taxes. But various commentators taking a “second look” at double federal taxation find several possible objections to it, when correlated with state law. See Hoffman, Let’s Go Slow With Tax Option Corporations, 37 Taxes 21 (1959); Stine, Subchapter S Election May Increase State Income Tax on Corporation or Stockholders, 10 J. Taxation 91 (1959).*
section 84-1501 to that effect, provided, however, that "as to all taxable periods ending on or after December 31, 1960, . . . the percentage of net income to be paid under this act shall be 4⅔%." Although the title states that the act provides for the "broadening of the tax base for foreign corporations," it does not appear to do so in fact. As originally printed, the bill proposed that the state, as the corporate domicile, subject Montana corporations to such tax on the "total net income received . . . from all sources." However, as finally approved, both domestic and foreign corporations are subjected to identically the same tax base of "total net income received . . . from all sources, within the state of Montana . . . ," the same base used heretofore. This act also increases the minimum tax due under section 84-1501 from $5.00, to $10.00 annually.

**Criminal Law**

*Vehicular and Traffic Regulations*

The considerable activity in the field of highway, vehicular and traffic regulation which has marked recent legislative sessions continued in the 1959 session. The particular subjects dealt with varied from "authority to set state-wide speed limits," to "vehicular weight limits," to further consideration of the power of municipalities to regulate traffic.

**Speed Limit**

Public interest was centered on the question of the power of the highway patrol board to set state-wide speed limits. It had asserted that power under the authority given it by R.C.M. 1947, section 32-2145, to establish "state speed zones" under certain conditions, by announcing that sixty-five miles per hour would be the maximum daylight speed limit throughout the state, and erected signs to that effect.

In House Bill 14 the board hoped to get the legislature to confirm, or at least validate that action, by amending section 41, chapter 263, Laws of Montana 1955, to add an express provision to the three categories of maximum speed already dealt with therein, so as to make it unlawful to travel anywhere in the state in excess of "sixty-five (65) miles per hour in such other locations [than those requiring a lesser speed] during daylight hours." But this bill was killed and, instead, Chapter 204 (S.B. 34) was enacted, amending section 32-2145, R.C.M. 1947, authorizing special speed zones, by adding to it the following sentence: "This Act is not in any way to be construed as authority to set a state-wide speed limit." With this the legislature made as clear as it could, its intention to retain control over the matter of general speed limits.

**Accident Reporting**

Montana adopted a comprehensive accident reporting code in the Uniform Accident Reporting Act, back in 1947. Chapter 256 (H.B. 107) amends the uniform act, R.C.M. 1947, sections 32-120 through -1217, in several details, most of them minor, though the following changes merit mention:

1. Amends section 32-1202 by transferring the power to suspend or revoke licenses from the registrar of motor vehicles to the highway patrol
board, and by reducing the maximum revocation period for leaving the scene of an accident from three years, to one year (by incorporating the limiting provisions therefor in section 31-149). This revocation power is, of course, in addition to criminal penalties. Further, both in this and in further sections dealing with license revocations, the authority to ‘‘suspend or revoke’’ is expressly extended to non-residents as well as residents; as to non-residents, the privilege to operate or drive in Montana is withdrawn.

2. Amends 32-1206, seemingly so as to require any driver causing any damage to any kind of personal property lawfully on the road, to ‘‘take reasonable steps to locate and notify the owner thereof.’’

3. Amends section 32-1207, requiring the giving of notice to local officers in case of injury or death, by adding a third reason for having to so report: ‘‘or property damage to the apparent extent of $100.’’

4. Amends 32-1208, requiring a ‘‘written report,’’ by raising the property damage limitation from $25 to $100, and changing the official recipient thereof from the ‘‘supervisor’’ to the ‘‘board.’’

5. Further, when the driver is physically incapable of reporting at once, any other capable occupant has that duty, and, if the driver is not the owner, then the latter has the duty to make the written report.

6. Included in this amendment to section 32-1209 is a stiff criminal penalty for making a false report—a maximum $500 fine, and/or six months imprisonment.

7. Section 32-1210 is amended to expressly make it a misdemeanor not to report such accidents, with $25 maximum fine, and suspension of license or permit, until such report has been filed.

Municipalities

Chapter 240 (H.B. 103) continues to deal with the problem raised by a leading case in 1956, City of Billings v. Herold, 296 P.2d 263, which ruled that a municipality had no jurisdiction to enact ordinances regulating driving on the city streets while intoxicated or under the influence of narcotics. Legislation in 1957 gave limited relief from the difficulties resulting from this case by authorizing such ordinances with respect to certain kinds of regulations, including drunk driving. The present act, however, amends R.C.M. 1947, section 32-2131, already providing for some municipal regulations, by adding this ‘‘universal power’’ clause: ‘‘14. Enacting as ordinances any and all provisions of this act and any and all other acts regulating traffic, pedestrians, vehicles and operators, thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction.’’ That provision should pretty well solve the problem of municipal jurisdiction over highways and traffic within its limits.

Water Vehicles and Traffic

Both 1955 and 1957 legislation touched lightly on the regulation of water traffic by requiring life preservers in sufficient numbers to protect all passengers, and by making it a misdemeanor to violate that law, with a maximum fine of $10 as a penalty.
Chapter 285 (Sub. H.B. 15) really lowers the boom. Both in minuteness and comprehensiveness, it compares very favorably with our accumulated codes governing highway vehicles and traffic. Some idea of its scope may be gleaned from its title:

... prescribing rules and regulations for numbering and registering motorboats and vessels ... defining terms and designating the fish and game commission ... as the state agency responsible for the administration of said act ... providing minimum equipment requirements ... establishing safety regulations ... establishing safety regulations for the use of water-skis, surfboards, etc. ... providing penalties ... repealing sections 94-35-266, 94-35-267, and 94-35-268 (the sections enacted in 1955 as amended in 1957) ...”

The detail and particularity of this act relative to the earlier legislation is suggested by the fact that, whereas the only requirement formerly was that there be enough preservers to go around, under this act all children under 13 must wear them at all times, and all skiers and boat operators pulling skiers also must wear them. The registration is as formal and complete as for cars—indeed such registrations must be reported to the registrar of motor vehicles by the commission. Safe driving and handling, duties at an accident, provision for elaborate equipment and safety devices, drunken operation, all are dealt with in an act, as is a considerable body of rules to establish who has the “right-of-way.” Furthermore, liability is imposed on the owner for injuries and collisions resulting from careless or negligent handling, or in violation of this act, whether he is operating the boat or not, if it is being operated with his permission, expressed or implied. This is a liability not imposed in automobile cases. A presumption of consent follows from operation of the boat by any member of the family or near relative. A duty to report accidents is imposed. Moreover, whereas formerly the maximum penalty for violation was $10, that is now the minimum, with a maximum of $500.00 and/or thirty days imprisonment. All in all, the waters of Montana, for recreational purposes are really being regulated.

Miscellaneous Traffic Provisions

In addition to making it a misdemeanor to drive while one’s license is suspended or revoked, R.C.M. 1947, section 31-155 also has directed the board to “double” the period for a suspended license, but to refuse to issue a new license, where the original was revoked, for a full year beyond the date the driver otherwise would be entitled to one. Chapter 84 (S.B. 71) amends this section so as to require the board to extend the “disability” period in such case for a second period identical in term to the first one.

Chapter 201 (H.B. 177), regulates the equipment which any kind of tow car must carry, to increase safety to others, by assuring adequate warning of possible danger. This equipment includes several varieties of red flares, lanterns and lights, approved by the highway patrol board, warning signs, visible day and night, two-quart fire extinguisher, broom for sweeping up broken glass, shovel to cover slick, oily spots with dirt, electric extension cord for disabled car, and a flashing or steady red light...
on top of car or crane. When necessary to obstruct the road, highway warning signs must be placed 200 feet on either side of the wreck. A few of the requirements apply particularly to "commercial" towing cars, but the bulk of them apply to "every tow car used to tow a vehicle by means of a crane, tow bar, tow line," etc. Violation of the act is a misdemeanor, with a maximum fine of $100 as penalty.

Heretofore R.C.M. 1947, section 53-623, has made it a misdemeanor, with maximum sentences of $300 fine and/or sixty days in jail, to operate certain vehicles on the highways weighing more than the gross vehicle weight marked on the vehicle itself, pursuant to section 53-628. Apparently, though, there are other records which may show a different weight. Chapter 226 (S.B. 165) amends this section so as to make it a violation of the section if the actual weight exceeds that contained in any of the official records mentioned, such as in the owner's certificate of registration and tax receipt, pursuant to 53-107, as amended. It concludes with a proviso, however, which saves the truck owner "if the gross maximum weight marked upon such vehicle is less than the gross vehicle weight shown on the owner's registration tax receipt or on the gross vehicle weight receipt, and such receipt shows the gross vehicle weight fee has been paid for the weight stated thereon."

Contributing to Delinquency

In 1955 it developed that different district courts in Montana were giving conflicting constructions to the following language of R.C.M. 1947, section 10-617, describing the classes of persons who may be guilty of contributing to the delinquency of a minor: "Any parent or parents, legal guardian, or other person." Some courts insisted that the phrase "other person" must be limited by the character of the named classes preceding it; hence the entire statute applied only to persons who stood in a fiduciary relation to the child, and/or to the state concerning the child. The more orthodox view, taken by other courts, was that a prosecution could be brought against any person who in fact "contributed" to the child's waywardness. For some reason an attempt to clarify the section in 1957 failed.

Chapter 22 (H.B. 75) intends to clarify the statute so as to make certain that any such person may be prosecuted and convicted thereunder. It does that by adding the word "any" so as to make section 10-617 read "any other person." Let's hope it does the trick.

Penal Provisions Affecting Business

It is a misdemeanor to remove the inspection seal from weighing and measuring devices. Chapter 78 (S.B. 139) makes proof of removal by anyone of the seal on a device he owns or uses prima facie evidence of his guilt.

The legislature made it a felony for anyone to solicit or take compensation in return for a contract to advertise another's property for sale, if he makes false statements concerning the services he will render or suppresses pertinent information for the purpose of inducing the other to enter into the contract. Chapter 125 (S.B. 186).

Chapter 69 (S.B. 200) makes it a misdemeanor to manufacture, sell,
offer for sale, or ship within the state any paint product without a clear label naming the manufacturer and giving full analysis of the content. Possession of offending products by a dealer is prima facie evidence of guilt.

Chapter 207 (S.B. 68) is of importance to the timber industry. It punishes by a fine of $100 to $1000 anyone engaged in cutting timber or conducting standing improvement of timber lands or clearing a right of way therein who fails to reduce fire hazard by proper disposal of slash or debris or who fails in the alternative to enter into a contract with the State Forester by which the latter is to manage or reduce the hazard.

**Other Miscellaneous Statutes**

**Bottle Clubs**

Chapter 200 (Sub. H.B. 305) makes operation of a "bottle club" a misdemeanor.

**Dumping**

Chapter 237 (H.B. 215) enlarged the existing statute to prohibit dumping of any other debris or refuse as well as garbage, in public recreational property as well as public streets and highways. Violation is a misdemeanor.

**False Pretenses**

The statutory crime of false pretenses is extended by Chapter 130 (S.B. 106) beyond its traditional scope. It is now a crime to obtain services as well as money or property by designedly fraudulent representations.

**Fireworks**

The existing law regulating fireworks was substantially altered by Chapter 273 (H.B. 171). The new law limits the sale of fireworks to certain permissible varieties, and to the period between June 24th and July 5th. The second section of the bill raises a problem. It makes it unlawful to possess fireworks "except as hereinafter provided," and goes on to permit supervised public displays. In the old statute such items as could be sold were by definition not "fireworks." By the present statute they are "fireworks," but are referred to as "permissible fireworks." Though the language is badly chosen the intent seems to be to retain basically the same law as existed before, which would permit possession of the "permissible fireworks" at any time. The penalty for violation of the statute is increased.

**Lewd Acts**

Chapter 57 (H.B. 203) increased the penalty for commission of a lewd or lascivious act upon a child under sixteen, from a maximum of five years to a maximum of twenty-five years.

**Motion Pictures**

Back in the infancy of the movies—in 1907—the legislature forbade the corruption of public morals by the depicting in motion pictures of a burglary, train robbery, or any other felony. Perhaps because the police
have not been fully enforcing the law of late the legislature repealed this statute. Chapter 52 (H.B. 218).

Narcotics

Penalties for violation of the Uniform Drug Act have been substantially increased by Chapter 6 (H.B. 39). For a first offense the penalty has been changed from fine up to $1000 and/or six months imprisonment to imprisonment for one to five years; for subsequent offense the change is from fine up to $5000 and/or five years imprisonment to imprisonment for five to twenty years.

Nuisance

R.C.M. 1947, § 94-1002, designating any building or place used as a resort for gambling or narcotics or as a place of assignation to be a nuisance subject to abatement, has been amended to include also a "tract of land under one ownership." Chapter 268 (S.B. 137). There is some problem, though, when one turns to the later provision for abatement of the nuisance by sale of personalty found in the building or place declared a nuisance, because "tract of land" is not included there.

CRIMINAL LAW ADMINISTRATION

Police and Police Practices

Law Enforcement Academy

A significant step toward the professionalization of police service in Montana was taken with the adoption of Chapter 7 (H.B. 11), creating the Montana Law Enforcement Academy. The Academy, limited to annual sessions of three weeks, is to be governed by an advisory board of seven men representing organizations specially concerned with law enforcement. The board is empowered to choose the academy site, establish qualifications for admission, select students from the qualified applicants, determine curriculum, select faculty, and establish regulations for the operation of the school. Time spent by officers in attending the Academy is treated as time on the job, and the local government units are empowered to expend limited funds to pay board, room, and travel expenses.¹

Radar

Chapter 120 (S.B. 52) makes evidence of the speed of a motor vehicle obtained by radar measurement admissible in court. Presumably, then, no expert testimony will be necessary to establish the validity of radar measurements in general, but it should still be necessary to establish the accuracy of the particular measurement in question by showing that the machine was tested both before and afterward.²

The same statute makes special provision for arrest without warrant in those speeding cases where radar is used to detect the violation. The

¹The first session of the Academy was held on the Montana State College campus in Bozeman for two weeks beginning in March. Thirty-nine officers were selected to attend.

²This is the position reached by the New York court even without a statute in People v. Magri, 3 N.Y.2d 562, 170 N.Y.S.2d 335 (1958).
officer who observes the recording of speed on the electronic device may arrest without a warrant, provided he makes it upon immediate, uninterrupted pursuit and is in uniform or shows his badge. This is no real change from existing law because such officer can ordinarily be said to be present when the offense is committed. The statute further provides that an officer down the road, who merely learns of the fact of violation by radio message, is permitted to arrest without warrant, provided he is furnished with adequate identification of the vehicle, is notified of the recorded speed immediately after its recording, makes the arrest as the result of immediate and uninterrupted pursuit, and is in uniform or displays a badge. This is an innovation, for under the general law mere information of an offense, not committed in one's presence, is insufficient for arrest without warrant for a minor offense.

By its terms the arrest provisions of the law are not to be effective unless signs giving warning of the use of radar in the state are placed at the state line and outside county seats and towns having over 2500 population. Similar warning must be given at major entrances to a municipality before radar may be used therein for law enforcement purposes.

Roadblocks

Erection of temporary roadblocks for the purpose of identifying drivers, checking vehicles for proper equipment, and apprehending wanted criminals is specifically permitted by Chapter 60 (H.B. 163). Officers are required to set up signs and warning lights to prevent collisions, and anyone proceeding through the roadblock wrongfully is guilty of a misdemeanor. While the emergency roadblock to apprehend a dangerous escaping criminal seems clearly permissible, there is a serious question whether the roadblock set up for a general check of licenses, safety equipment, intoxication or the like is constitutional. In a recent decision a Florida Circuit Court held a roadblock for such purposes violative of both the state and federal constitutions. The court emphasized that a desirable end cannot justify an unconstitutional means.

Juvenile Offenders

There were three separate bills before the legislature to limit or abolish the cloak of secrecy covering juvenile proceedings—House Bills 10, 58, and 71. All three were killed.

Chapter 215 (S.B. 16) gave to the district court exclusive original jurisdiction over traffic offenses committed by children under eighteen. It is doubtful that the requirement of secrecy under R.C.M. 1947, section 10-611 applies in the district court. The bill provides that if after a hearing before the court the child is found to have unlawfully operated a motor vehicle the court (1) may impose a fine up to $50, (2) may revoke or suspend his driver's license, and (3) may order any motor vehicle

13The provision requiring warning signs is somewhat ambiguous as to where they must be located.
14HOUTS, FROM ARREST TO RELEASE 48 (1958).
owned by the child or operated by him with the owner's consent impounded for a period up to 60 days. If a fine is not paid, the second and third measures may be taken until it is paid, but imprisonment may not be imposed for non-payment of the fine.

Any police officer witnessing the unlawful operation of a car by one under eighteen may issue a summons directing the offender to report to the district court. While it is doubtful that such a summons is of any more legal force to require appearance than the ordinary traffic ticket, there is little question of its practical effectiveness.

Finally, the bill seems to contemplate a simple judicial hearing and determination, without participation of jury. The statute leaves unanswered such questions as whether the offender may demand a jury trial, what the rights of innocent car owners are, and who must pay the cost of impounding and garaging the car.

**Court Proceedings**

House Bill 443, which was killed, would have altered the existing rule forbidding more than one crime to be charged in a single information by adopting the federal rule, which permits the charging of any number of offenses which are connected in their commission or which are of the same class of crime even though otherwise unrelated.

**Disqualifying Judge**

Chapter 61 (H.B. 70) permits a judge to be disqualified arbitrarily at the instance of either party to a criminal action. This is an extension of the "Fair Trial Bill" enacted in the days when Judge Clancy was alleged to be a pawn of F. Augustus Heinze in his battles against the Anaconda Company. Though the language of R.C.M. 1947, section 93-901 was not limited to civil actions, it was so construed by the state supreme court. After repeated attempts the principle of peremptory challenge of the judge has been extended to criminal actions. The language is largely copied from section 93-901, but the provisions differ in the following respects: The affidavit of bias and prejudice must be filed fifteen, rather than five days before trial or hearing. Only one judge can be disqualified by the prosecution and one by the defense (even with multiple defendants) instead of two. The provision does not apply to contempt proceedings, a qualification which though not appearing in the civil statute has also been recognized therein by the cases.

**Sentencing**

A proposed habitual criminal statute—Senate Bill 122—was killed. It would have made mandatory a life sentence upon third conviction of felony or upon a fifth conviction of even a misdemeanor if intent to defraud were involved.

**Part-time Imprisonment**

A sensible innovation in sentencing has been codified in Chapter 249 (H.B. 157). It permits the court, upon request of the county attorney and sheriff and with the consent of a convicted person who is sentenced to the county jail and who has a job, to grant "parole" during the prisoner's regular hours of employment. This permits the prisoner to retain
his job, even though he must be confined during his off hours. His earn-
ings must be collected by the sheriff and used to pay his board and per-
sonal expenses both inside and outside the jail, and to support his de-
pendents as ordered by the court; the sheriff retains any balance until
the prisoner is discharged. The use of the term parole seems unfortunate,
since it conflicts with its usage in the Probation, Parole and Executive
Clemency Act.\textsuperscript{4} Probation would better have been used. A substantial
problem is raised by the provision that the committing court may, upon
request of the county attorney and sheriff, reduce the prisoner's sentence
up to one-fourth if his conduct warrants it. The court can likewise cancel
this diminution. If the court has power to reduce sentence after commit-
ment of the prisoner to jail, it probably has power to cancel that reduc-
tion; but if the reduction is properly a commutation of sentence, it is a
power reserved by the state constitution to the executive branch of govern-
ment.\textsuperscript{5} Even if the provision for reduction of sentence should be invalid,
the provision for freedom during working hours could stand alone.

\textbf{Prisons}

Montana's prison system should be substantially improved by a num-
ber of new laws.

\textbf{Construction}

By approving House Bill 424 the legislature and governor permitted
the question of a $5,000,000 bond issue for prison construction to go before
the people. It will appear on the ballots in the November election, 1960.

\textbf{Prison Commissioners}

Chapter 194 (H.B. 43) puts on the same ballot the abolition of the
constitutionally created board of state prison commissioners, presently con-
stituted of the governor, secretary of state and attorney general. Adoption
of this constitutional amendment would pave the way for a statutory board
of corrections made up of persons more directly concerned with prison
work.

\textbf{Warden}

By Chapter 58 (H.B. 47) the warden of the state penitentiary must
be specially trained and experienced in prison work in a managerial ca-
pacity; his salary is increased from $7600 to $8400 per year, plus free
housing and food for himself and his family; his rights to full hearing
before discharge are spelled out in detail; his tenure is no longer specified,
so that he is removable now only for misconduct until he reaches compul-
sory retirement age of 65, after which he may be continued on a year-to-
year basis.

\textbf{Guards}

Guards may hereafter be suspended, demoted or discharged by the
warden only for cause upon a sworn, written charge of misconduct; they
have, too, the right to appeal to the board of state prison commissioners

\textsuperscript{4}R.C.M. 1947, §§ 94-9821 to -9851.

\textsuperscript{5}State ex rel. Bottomly v. District Court, 73 Mont. 541, 237 Pac. 525 (1925).
and obtain there a full hearing." Along with the more usual causes for discharge we find listed active participation in any political campaign, even including any direct or indirect financial contribution. All employments as custodial officers or promotions to lieutenant or captain are merely probational for six months. These provisions all appear in Chapter 242 (H.B. 44).

**Prison Industry**

By Chapter 14 (H.B. 48) prisoners may hereafter be given incentive payment for their work in prison industry in amounts ranging from two cents to fifty cents per day, depending upon the job performed. The funds come from the profits of prison industry.

**Using Prison Facilities of Other States**

The Western Interstate Corrections Compact was adopted by Chapter 236 (H.B. 435) to facilitate interchange of prisoners among the states in the Rocky Mountains and westward. What has been done on a less formal basis is now to be specifically authorized by statute. The compact can result in substantial savings to the states and in superior facilities for rehabilitation of offenders. In simplest terms the compact permits one state to make a contractual arrangement with another to send convicts, reformatory inmates, or mentally ill or defective persons who are lawfully committed, to the second state for confinement. The receiving state acts as agent for the sending state in confining, rehabilitating or treating the inmate. The sending state may at any time reclaim the inmate unless he is wanted in the receiving state for some offense committed there.

The governor, with the assent of the board of examiners, is empowered to enter into contracts on behalf of the state pursuant to the compact, and all courts, departments and officers of the state are required to do whatever is appropriate to effectuate the purposes of the compact.

**DOMESTIC RELATIONS**

**Colloquy**

The public's principal interest in bills concerning domestic relations was centered primarily on a series of bills attempting to deal with the so-called "contract marriage" in Montana. In the past, it has erroneously been assumed, both officially and unofficially, that R.C.M. 1947, sections 48-130 to 48-132, inclusive, authorize a highly informal method for effecting a "marriage" simply by mutual agreement in writing. The practice based on this assumption has continued—indeed has been greatly accelerated—by the enactment of R.C.M. 1947, section 48-134, which re-

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10These safeguards are now basically similar to those of the highway patrol in R.C.M. 1947, § 31-105.

quires a pre-marital blood test as a condition to the securing of a marriage license. However, such practice clearly conflicts with the intendment of that statute. The several bills introduced which considered this problem attempted to deal with it in a number of ways. Only two of these bills survived.

Marriage

Ceremony

House Bill 4 proposed simply to repeal sections 48-130 through 48-133, even though it was pointed out recently that these sections do serve a legitimate purpose when properly construed and limited. This bill was killed.

House Bill 64, which was intended only to supplement House Bill 4, would have amended section 48-133, simply by deleting the clause, "or refused to join in a declaration thereof." The apparent purpose of this was to delete all reference in the statutes to the "declaration of marriage," which was the phrase relied on to support the simple "contract marriage." It likewise was defeated.

Chapter 275 (S.B. 70), amends R.C.M. 1947, section 48-130, so as to authorize what in substance amounts to still another, though less formal, ceremony as an alternative to the one generally provided for in section 48-116, enumerating the various officials qualified to officiate at a marriage. Whereas heretofore section 48-130, correctly interpreted, applied only to marriages already consummated (though by informal or irregular means, as e.g., a common law marriage), the amended section now reads: "Declaration of marriage without solemnization . . . persons desiring to consummate a marriage by written declaration . . . without the solemnization provided for in section 48-116. . . ." This new language expressly validates the use of the "declaration of marriage" as an alternative "ceremonial procedure." However, no direct statement is made as to whether this informal procedure has to be supported by a marriage license to be valid. The writer has maintained in the past that the validity of every ceremonial procedure authorized by our statutes, however informal it may be, must be supported by the prior issuance of a marriage license. However, the history of the "marriage contract" in practice, combined with the additional new requirements and limitations upon the use of the "declaration of marriage," supports the conclusion that, under it, the "marriage license" requirement is dispensed with. This Act also amends section 48-130 to require the securing of the pre-marital medical certificate generally required by section 48-134, and the affixing of that certificate to the declaration of marriage. Heretofore these procedures have been absolute conditions to the securing of a marriage license. Section 48-134 also is amended further so as to require in the declaration of marriage still additional information normally required for a license. This information includes: the name of the father of each of the parties, the maiden name of the mother of both, and the address of each; also a statement that both parties are competent to marry; all this data must be attested by two witnesses, and formally acknowledged before the clerk of

Webb, supra note 17, at 78-79; Briggs, supra note 17, at 45.
the district court where registered. Moreover, the amended section evades the mandate of section 48-117, that, "Previous to the solemnization of any marriage in this state a license for that purpose must be obtained from the clerk of the district court. . . ." The new bill avoids this latter requirement by expressly stating that a marriage may be "consummated" by means of the declaration of marriage without any "solemnization" whatever."

All of these restrictive limitations on the use of the "declaration of marriage" as a means of creating a marriage, combine to obviate much of the evil resulting from the loose, hurried and impulsive use of the "declaration." But beyond these restrictive limitations required for the "declaration" itself, this Act provides for very serious penalties which, combined with the restrictions, should assure generally responsible use of the "declaration." In effect, the Act requires literal compliance—unless every step required by section 48-130 as amended is complied with, the marriage will be void. Moreover, the minimum criminal penalties provided for in section 3 of the Act, for any violation thereof is rather substantial—"not less than $300.00 or six months in jail, or both." So, although the remaining provision seeking to limit responsible use of the new provision and making it "unlawful for any person, other than the parties . . . to draw any such declaration of marriage unless he shall have been duly licensed to practice law" may well be avoided by the use of form agreements, there are grounds for hoping that this Act will help restore some sanity to our law and practice regulating marriage."

Chapter 276 (S.B. 69) recognizes that the true purpose of R.C.M. 1947, sections 84-131 and 84-132 is to "reestablish records of formally existing marriages, the records of which may have been destroyed in one way or another." It amends that section so as to make its meaning clear beyond all dispute, this improving on the language recently suggested for that purpose." Section 2 of this Act also amends R.C.M. 1947, section 84-132, so

10The amending language, "persons desiring to consummate a marriage by written declaration," introduces an irregular and confusing meaning to the word consummating. By standard definition, the "consummating act" in a marriage is sexual intercourse. However, that section as amended, raises the question of whether it must be construed as amending by implication section 48-101, which declares that "consent alone will not constitute a marriage; it must be followed by a solemnization, or by mutual and public assumption of the marital relation." (Emphasis added). Traditionally, the last phrase has been construed to refer only to a "public cohabitation."

11Interestingly, this section provides only a minimum penalty of $300 and/or six months in jail, with no stated maximum.

12This section, as amended, may be considered to be but a particular and somewhat formalized application of the informal marriage ceremony long permitted under section 48-128. That section declares that "in the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, or of attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses present at the ceremony." However, in the past, to validate any kind of ceremony under this section, it had to be supported by a formal marriage license. In view of this statutory history, probably it would have been better had section 48-130 been amended to read "solemnization by declaration of marriage," rather than "declaration of marriage, without solemnization," and to have expressly dispensed with the marriage license, if that were thought permissible.

13Briggs, supra note 17, at 46.
14Id. at 50.
as to make clear that the "declaration" which it refers to and requires to be acknowledged and recorded, is the one provided for under section 48-131 to "reestablish the records for an existing marriage," and not the "contract of marriage" dealt with by section 84-130. Before amendment, this section was extremely ambiguous in that respect.

Chapter 21 (H.B. 6), amends R.C.M. 1947, section 48-134, to expressly require that applicants for a marriage license present to the issuer, "a birth certificate or other satisfactory evidence of age," and also "exhibit . . . the consent required by section 48-118," from the parents of any minor applicant. It appears that the court clerk always has been expected to require satisfactory evidence that the applicants are qualified to marry, under sections 48-117 through 48-121, regulating the issuing of licenses. However, he has had a broad discretion as to what should constitute such "satisfactory evidence." This Act seems to narrow his discretion substantially by limiting the character of the evidence which will be acceptable as proof of age. Also, although not expressly so providing in the title, in requiring the "exhibiting of a written consent of the parents of a minor," these sections seems to impliedly amend section 48-118, which formerly required proof of parental consent "by the testimony of at least one competent witness."

Adoption

Two of the more newsworthy bills in the domestic relations field failed to secure approval. The legislature killed one and the governor vetoed the other. Although Montana enacted the Uniform Adoption Act generally in 1957, not all of its provisions were included. Although House Bill 232 and Senate Substitute for Senate Bill 74 were publicized as intending to make adoption easier, Montana law prior to 1957 had made adoption "easier" in certain respects than did the Uniform Act. In particular, R.C.M. 1947, section 61-130, dealing generally with the requirement that the consent of the child's parents must be given before legal adoption can be completed, listed some eight different classes of parents whose consent did not have to be secured, thus making the adoption much easier in many cases. Even as to these classes, however, section 61-130 required that all such parents be given notice of an adoption proceeding, excepting only those already deprived of custody by a court judgment in a neglected or dependent child hearing. The Uniform Act very generally required parental consent in writing, excepting only those parents "whose parental rights have been judicially terminated." When Montana adopted the Uniform Act, it was modified to continue the several classes enumerated in section 61-130, whose consent was not necessary. However, the 1957 Act failed to continue the "citation" requirements found in section 61-130, thus failing to give those parents even the protection of receiving notice of the pending adoption. These bills proposed to restore the provisions requiring "service of process" by citation on such parents, originally appearing in section 61-130. So, instead of making adoption easier, they were intended to "tighten up" the provisions of the Uniform Act as modified and adopted by Montana in 1957. And well might they be tightened

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*See Montana Legislative Summary, 1957, 18 Mont. L. Rev. 121 (1957).*
in this respect, for the problem of protecting an award of adoption against subsequent attack by the blood parents has always been a very sticky one; and the United States Supreme Court is showing increasing sensitiveness to the interests of both parents in the personal relationship to the child, in all forms of custody proceedings. Hence every effort must be made to assure compliance with the requirements of due process.  

Governor Aronson vetoed House Bill 232 for the published reason that it might be interpreted as requiring the citation of parents in several situations in which their rights had already been determined. This, he said, would be intolerable. The Senate bill, killed by the legislature, had contained a limitation on the requirement that parents be cited. This limitation may have been what the Governor had in mind. Although the protection which the vetoed bill would have given parents may be broader than absolutely necessary for constitutional purposes, it may be desirable to assure a “margin for error.”

Both of these bills also intended to correct a defect in the original bill adopting the Uniform Adoption Act in 1957, in its failure to formally repeal the then existing Code sections dealing with adoption, even though the bill’s title expressly stated that to be one of its purposes. However, these sections—61-127 through 61-137—would appear to be repealed wherever conflicting by the general repealing clause appearing in section 18 of that Act, as well as by implication and by the strongest kind of evidence of legislative intent.

**FISH AND GAME**

This generic heading covers diverse matters; all, however, relate to the powers or regulations of the Fish and Game Commission. Chapter 96 (S.B. 134) enlarges the Commission’s powers by granting authority over recreational uses of public fishing reservoirs and lakes constructed by the Commission or those which the Commission operates under agreements with other state or federal agencies or private owners. Such rules as the Commission promulgates are “subject to review and approval by the State Board of Health as to public health and sanitation before becoming effective.” The Act amended section 26-104, Revised Codes of Montana, 1947, as amended.

Section 26-201 is amended by Chapter 34 (H.B. 111) to add the “chukar partridge” to the classification of “upland game birds,” to add the “Canada lynx and black-footed ferret” to the class denominated “fur-bearing animals,” and to remove the “lynx” and “black-footed ferret” from the list of “predatory animals.” In addition, the “fox” was removed from the list of “fur-bearing animals.” The purpose of the original bill to add the “fox” to the list as a “predatory animal” was not effectuated in the enactment.

Two other amendments affected persons who work closely with personnel of the Fish and Game Department. Chapter 31 (H.B. 115) raised the compensation paid license agents for each license issued from ten cents to fifteen cents. By the terms of Chapter 12 (H.B. 68), taxidermists are

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required to keep written records relating to articles of game, the license number, name and address of the owner, to hold such records for at least one year, and to open them for inspection by any game warden at any reasonable time.

The interests of bow-and-arrow hunters and skin-and SCUBA-divers are served by Chapters 36 and 44, respectively. The former (H.B. 67) adds elk and antelope to the list (comprised only of "deer" prior to amendment) of animals which may be taken by bow-and-arrow in the areas and subject to the regulations provided by the Commission. This act affected section 26-104. Section 26-332 was amended by the latter chapter (H.B. 146) to provide that "rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water" may be used for the taking of "designated species" of non-game fish. Furthermore, the amendment deletes the words "and Dolly Varden trout" from the section. The result is that this species may not be taken by "traps, seines, or nets."

There were these amendments concerning the licensing provisions of the statutes: Chapter 27 (Sen. Sub. for S.B. 8) authorizes the Fish and Game Commission to issue special nonresident antelope and deer licenses for a fee of $20.00 for each license. The licenses are valid only for the area designated in the license and are good for only one year. Provision is made for public hearings by the Commission upon receipt of complaints from ten or more persons in any area designated for such nonresident hunting. With relation to determining a "resident for the purpose of issuing resident fishing and hunting licenses," Chapter 106 (S.B. 109) amends section 26-202.3 to include the spouses of armed forces members within the exception which allows them to obtain resident licenses thirty days after reporting for duty in Montana.

Chapter 35 (H.B. 114) authorizes the issuance of wild turkey tags for a fee of $2.00. The wild turkey is classified by section 26-201 as an "upland game bird;") tags may be issued to holders of class A (resident game bird and fishing), class B-1 (nonresident game bird) or class B-2 (nonresident big game) licenses. The Act provides that turkey tags may be issued by drawing or in unlimited numbers in accordance with Commission regulations.

Section 26-703 is amended by the provisions of Chapter 123 (S.B. 132) to allow nonresidents properly licensed to ship from the state a legal limit of fish. The section formerly read "one.") In addition, the amendment allows purchase from authorized license dealers of permits for the shipment of additional fish. The purchase of the permit does not allow taking more than the legal limit per day. The effect of the amendment seems to be to allow nonresidents to ship or remove from the state a legal limit each day so long as he purchases permits therefor. Further amendment of the section adds the words "fur-bearing animals" to the list of animals, birds or fish for which shipping permits are required.

**HIGHWAYS**

Chapter 133 of the Laws of 1959 (S.B. 190) amends section 84-1817, R.C.M. 1947, as amended, to provide that apportionment of state construction moneys to the federal aid secondary highway system should in-
elude state owned lands from which the state derives grazing, timber and agricultural income. In addition, the amendment provides that the value of rural lands must be computed from the latest Board of Equalization report. The chief result of these changes is to allow financial districts or counties with state holdings a share of construction funds equitably related to the shares of areas in which there are no state owned lands.

Chapter 134 (Sen. Sub. for S.B. 197) amends Chapter 20 of Title 32, concerning controlled access highways, and is so short and to the point as to be worthy of quotation: "32-2009.1. COMMERCIAL ENTERPRISE OR STRUCTURE—No commercial enterprise or structure can be constructed or operated on the publicly owned right-of-way of, or on any publicly owned or leased land used for, or in connection with a controlled access facility." The language seems broad enough to prohibit anything from restaurant to billboard, and is a forthright statement on a problem which has concerned the United States Congress and other legislatures."

By the provisions of Chapter 210 (S.B. 177), the power of the State Highway Commission to sell property interests not necessary for state highway purposes is enlarged to include personal property and printed matter. In addition, the amendment allows the landowner from whom the real property was originally acquired the option to purchase it from the Commission for the amount received within ten days from the date the land is "sold" at public auction. The prior owner is granted a similar remedy when the Commission seeks to trade what was formerly his land for other land needed for highway purposes.

Several sections of the Revised Codes of Montana, 1947, are affected by Chapter 247 of the Laws of Montana 1959 (H.B. 254). Sections 32-103, 32-2114, and 84-1831 change the definition of public roads and highways to read as follows: "... all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be built and maintained with funds of the State of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain." In addition, two new sections have been added to 84-1831. One provides that operating motor vehicles "directly across" public roads and highways for the purpose of transporting natural resources products (including crops and livestock) is not to be considered operating such vehicles on the roads or highways. The other restricts the state's powers to regulate motor vehicles, license them, or to tax the fuel they use to vehicles "operated on the public roads and highways of this state." (Emphasis supplied.)

For example, New York Public Authorities Law, section 361-a, prohibits erection of any "advertising device" within 500 feet of the nearest edge of the pavement of the New York Thruway. "Advertising device" is defined as any "device intended to attract or which does attract the attention of operators of motor vehicles on the thruway...." The concern is at once esthetic, commercial and humane. Prohibitions against billboards and the like are tied to desires to preserve natural beauty, while those who seek to attract the attention of the traveling public are not so motivated. Those who have examined into such matters as "turnpike fatigue" have suggested that the interests of safety might be served by allowing erection of structures along the right-of-way in order to break the monotony of continued high speed driving, and prevent inattention and dozing at the wheel.
It is the last amendment which gives substance to the others, but this would not be so clear had one not access to the text of the House bill as it was presented. Section 1 of that bill declared that, because of increased highway travel casualties and costs to the state, it was the policy of the state to encourage "the off-highway use of motor vehicles." By Senate amendment, both this section and the reference thereto in the title of the bill were deleted. It is not clear whether, or to what extent, there is conflict between the stated limitation on the state's power to tax fuels, and the provisions of section 84-1818 concerning the refund of fuel taxes paid by those who did not use their vehicles on the public highways.

INSURANCE

New Insurance Code

The most extensive piece of legislation passed by the assembly was the new insurance code, Chapter 286 (H.B. 29), whose effective date was set ahead to January 1, 1961. The Law Review anticipates publishing an article in the Spring, 1960, issue treating the new code in detail, so the statute will not be reviewed here. However, a few of its provisions are discussed hereinafter under the heading of Uniform and Model Laws.

THE JUDICIARY

Number of Judges and Salaries

Chapter 161 (H.B. 329) provides for another district court judge for Cascade and Chotueau Counties. It provides for the election in 1960 of a third judge for the Eighth Judicial District, who is to undertake his duties the first Monday in January, 1961.

Chapter 198 (H.B. 155) raises the annual salaries of district court judges from $9000 to $9500.

LABOR LAW

Chapter 160 (H.B. 416), is the only bill regulating the labor-management field, enacted into law. It intends to protect the very small businessmen in the retail field in the use of members of his family in his business, without interference or pressure from unions, by providing that it is an "unfair labor practice" for a union to "infringe or interfere" with such right to employ members of the family in a business, and imposing a fine of $50.00 for any violation of the Act. This bill acquired the sobriquet of the "Little Right to Work Law."

House Bill 33 proposed to protect persons from ages 45 to 65 against "discriminatory treatment" of any kind whatsoever as a worker or potential worker, because of his age. This bill was killed. Still another bill, House Bill 20, would have established a minimum wage law at $1.00 per hour, with further provisions requiring the keeping of certain records thereon. It too was defeated.

The fragmentary, piece-meal treatment which is given the labor-management relations field generally, by the bills introduced into the
Montana legislature through the past several sessions, strongly suggests the possible need for a careful study of the whole field to determine whether a comprehensive integrated code, covering the field should be prepared for legislative consideration.

**MUNICIPAL CORPORATIONS**

Chapter 195 (H.B. 335) authorizes cities to act to rehabilitate blighted areas. In the process, they may acquire and dispose of property, issue bonds, levy taxes and assessments, make agreements to get federal aid, and create urban renewal agencies. The act emphasizes a purpose that cities give maximum opportunity to redevelopment by private enterprise. The act confers broad powers on cities, except that it recites that it shall not be construed to authorize municipal construction of any electric generation plant or other public utility facilities except water and sewer lines.

**PERPETUITIES; PENSION AND PROFIT-SHARING PLANS**

Draftsmen of pension and profit-sharing trusts have been bothered by the question of the applicability of rules against perpetuities or against suspension of the power of alienation to such trusts. Chapter 214 (S.B. 103) settles this question by providing that no rule relating to restraints against alienation, suspension of the power of alienation, accumulations of income, perpetuities or remoteness of vesting shall apply to a trust which is part of a pension, retirement, insurance, savings, stock bonus, profit-sharing plan or similar plan created by an employer, group of employers, labor union, or an association of employees for the benefit of employees or their beneficiaries.

This bill should be viewed with Chapter 213 (S.B. 104), which amends sections 67-406, -407 to change the period for permissible suspension of the power of alienation and adopts the common law rule against perpetuities. This latter statute is discussed more fully *infra* under the heading of Uniform and Model Laws, Model Rule Against Perpetuities Act.

**PERSONAL PROPERTY**

Chapter 143 (H.B. 302), a short amendment intended to avoid some problems, may have created some. As the Act stands, it provides for the extension to the joint owners of personal property the same remedy of partition which has existed in favor of owners of real property. However, there was inadvertently omitted from the section of the amendment providing for sale of personal property a reference to Title 93 of the Revised Codes. This commentator is not prepared to say that this is a fatal defect, but the omission quite obviously offers a problem of construction.7

7The latter day concern with "legal writing" prompts the additional observation that section 2 connects a plural noun, *provisions*, and a singular verb, *is.*
PUBLIC HEALTH

Tuberculosis Commitment

The legislature has provided for the commitment of persons having communicable tuberculosis to a public sanitarium under court order. The statute (Chapter 259 (H.B. 93)) permits any board of health in the state, upon recommendation of a doctor, to apply to the district court for an order (1) requiring a person suspected of having communicable tuberculosis to submit to examination, or (2) requiring a person determined to have communicable tuberculosis (and who refuses to go voluntarily) to be removed to a sanitarium. After summons, hearing and examination of the witnesses the court may enter either order. If the person refuses to submit to examination under court order he shall be committed as though infected, but no persons can be required to submit to any medical treatment against his will after he is committed. Under the statute one may apply to the district court for release after 180 days on the ground that he is no longer a health menace. This latter provision may limit the right to hearing under the statute, but cannot limit the right to apply for habeas corpus. All expenses of the proceedings are a charge on the county.

Under Chapter 189 (Sub. H.B. 92) the executive board of the Montana Tuberculosis Sanitarium can now receive any person as a patient who is certified by a physician as suffering from tuberculosis. The new law (probably enacted to conform with Chapter 259, above) alters the old provision, which permitted acceptance only of patients unable to pay and who were citizens or residents of the state for a year.

SCHOOLS

Chapter 39 (H.B. 202) simply reduces the age for compulsory school attendance from eight to seven years, by amending section 75-2901, R.C.M. 1947, to so provide. The age at which a child may work while going to school, after completing the eighth grade, was changed from fourteen years to sixteen years in 1955.

Chapter 167 (H.B. 476) amends R.C.M. 1947, section 75-4601, which authorizes additional members for school boards under certain conditions. The new bill expressly empowers those additional members “to vote on the selection of the district superintendent of schools.”

Chapter 278 (H.B. 170) amends section 75-4103, R.C.M. 1947, which previously provided for the selection of six county high school board members only by appointment by the county commissioners, with the county superintendent an ex officio seventh member. In the opinion of many high school patrons, appointed high school boards have at times shown an extraordinary capacity for arbitrary action. This Act changes the pre-existing statute so as to authorize a “local option” as to whether the trustees of any county high school should be appointed or elected. They will continue to be appointed, however, until a majority of the qualified electors of the “county high school district” vote for an elective board, in an election duly called by the county commissioners for that purpose, in compliance with a request by petition. The petition must be signed by fifteen percent of the qualified voters of such “county high school district.” Any
twenty-five qualified electors may file nominations with the county clerk and recorder, with as many names as there are offices to fill, for such election. The earliest date on which such an election can be authorized is the first Saturday in April. At the first election the trustees will choose one, two and three year terms by lot; thereafter all will hold office for three years, with an annual election to replace expiring memberships. Upon election of the seven board members, the county superintendent is no longer a member. It may be hoped that this bill will provide relief for those districts in which there is dissatisfaction, without disturbing those appointed boards which are rendering satisfactory performance.

**STATE AND LOCAL GOVERNMENT**

*Constitutional Amendments*

House Bills 131 and 137, which would have submitted to the electors a proposal to hold a convention for the purpose of revising, altering or amending the Constitution, were killed.

Chapter 193 (H.B. 197) was passed. It provides for the submission to the electors of an amendment to the Constitution which would increase from two to four years the time limit upon the terms of office which may be prescribed by the legislative assembly for county, township, precinct and municipal officers, except as otherwise provided in the Constitution.

*Federal Aid to Education*

Senate Joint Resolution 4 petitioned Congress to provide funds through the proposed "School Support Act of 1959" (sponsored by Senators Murray, Mansfield and others, and introduced by Congressman Lee Metcalf and others, including Representative LeRoy Anderson), to supplement state and local financial resources.

*Bond Validation*

Chapter 16 (H.B. 96) was passed to be in force and effect from and after its passage and approval, ratifying and confirming bonds and other instruments and obligations heretofore issued by public bodies of the state.

*Meetings of County Commissioners*

Chapter 132 (S.B. 31) provides for an extra meeting of boards of county commissioners. The Revised Codes of Montana, 1947, section 16-910, provides for meetings on the first Monday of each month. This is amended to provide for meetings on the first and third Monday of each month, except when the commissioners are meeting as the County Board of Equalization.

*Notice of Intention to Create Special Improvement Districts*

Chapter 261 (H.B. 437) changes the present requirement of R.C.M. 1947, section 11-2204, that notice of the passing of a resolution of intention of a city council to create a special improvement district be mailed to all owners of property within the district. This requirement was rigidly
applied in *Wood v. City of Kalispell,*\(^\text{a}\) which held that failure to mail a notice to a single property owner, although due only to mistake or inadvertence and not to bad faith, was fatal, since strict compliance with the statute is jurisdictional. The amendment to the statute makes it less onerous by providing that the notice need be mailed only to owners of real property within the district listed in their names upon the last completed assessment roll for state county and school district taxes.

**Planning Boards**

The act of the 1957 legislature providing for the creation of city and city-county planning boards was amended in some particulars. Included within the changes made by Chapter 271 (H.B. 91) are the following: Two of the four citizen members of a city planning board must be freeholders within the urban area, two must be freeholders within the city limits, and such citizen members must not hold other office in city government. The citizen members of a city-county planning board are required to be freeholders within the area over which the planning board has jurisdiction, and two must be freeholders in the area outside the city. The provisions of the 1957 law with respect to the terms of office of citizen members of city planning boards are repealed. Approval by the board of county commissioners is required of the map or plot of the unincorporated area over which the planning board has jurisdiction. Further, boards of county commissioners are given the powers regarding building and zoning regulations which city councils also have under the 1957 law.\(^\text{b}\) Under the amendment when an unincorporated area is within the potential jurisdiction of more than one planning board, the boundary between the conflicting areas is to be settled by agreement between the planning boards involved, with the approval of their respective governing bodies, rather than by a proportion of the population of the incorporated area as presently provided. The provisions of the 1957 law respecting the recovery and use of mineral and forest resources is expanded to include agricultural resources.

**Fees for Examination of Credit Unions**

Chapter 115 (H.B. 368) changes the fee for examination by the state examiner of credit unions. The fee is raised to $45.00 a day for each person engaged in the examination, but without charge for transportation or per diem, whereas the law has provided for a fee of $30.00 per day plus transportation and per diem.

**Methods of Recording Instruments**

The methods of recording instruments have been modernized. Chapter 116 (S.B. 39) permits county clerks and recorders to preserve records by the use of microfilm. Chapter 117 (S.B. 40) provides for the recording of instruments by photostatic, microphotographic or microfilm process.

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\(^\text{a}\)131 Mont. 390, 310 P.2d 1058 (1957), noted in Recent Decision, 20 MONT. L. REV. 114 (1958).

\(^\text{b}\)House Bill 90 authorizes county commissioners represented on city-county planning boards to exercise building and zoning powers granted to city councils by R.C.M. 1947, § 11-2701 to -2709.
Warehouse Insurance

Chapter 145 (S.B. 173) amends the statute relating to the licensing of public warehousemen by requiring the carrying of adequate insurance approved by the commissioner of agriculture to protect holders of warehouse receipts from loss.

Lobbying

Chapter 157 (S.B. 26) seeks "to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices and to provide for the licensing of lobbyists and the suspension or revocation of such licenses." The restrictions imposed by the act are effective only during regular or special sessions of the legislature. Lobbying is defined as "the practice of promoting or opposing the introduction or enactment of legislation before the legislature or members thereof by any person other than a member of the legislature or a public official acting in his official capacity." A lobbyist is one who is paid for his services but persons who are reimbursed only for personal living or travel expenses or who limit their activities solely to appearances before legislative committees and who register such appearances in writing on the record of the committee are not subject to the act. Employment of lobbyists on a contingent fee basis is prohibited.

Applications for licenses are filed with the Secretary of State and must be accompanied by a fee of ten dollars. Only persons of adult age, of good moral character and citizens of the United States are eligible. Licenses expire on December 31 of each odd numbered year but may be otherwise suspended or revoked in a civil action instituted by the Attorney General because of "unprofessional conduct or . . . having procured his license by fraud or perjury or through error." The Secretary of State is required to maintain a docket of all lobbyists, their principals, and the subjects of legislation to which their employment relates. Weekly reports of such information are submitted to each house during the legislative session with such changes as may occur.

Copies of Legislative Proceedings

Chapter 223 (H.B. 544) levies a charge of one hundred dollars for a complete set of each item of the proceedings of the legislature or 25¢ per single copy of all bills and similar items and 10¢ per copy for status sheets. All elected state officials, state department heads and county clerks and recorders are exempt from the provisions of the act and "representatives of the press, radio, and television who shall have first registered with the Secretary of State" are entitled to receive one complete set of the mimeographed and printed proceedings without charge.

Council of State Governments; Interstate Cooperation

Chapter 72 (H.B. 519) may have greater implications than any other single enactment of the 1959 session. That act authorizes Montana to become a member of the Council of State Governments and provides that the Legislative Council shall be a member of the Commission on Interstate Cooperation. Although Montana has been represented on the National Conference on Uniform Laws for many years, recommendations of the Montana
Commissioners to the legislature have been disregarded in many instances. (See the discussion infra under the heading of Uniform and Model Laws.) However it is now the stated policy to:

Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules or regulations, informal cooperation of governmental offices, personal cooperation among government officials and employees, interchange and clearance of research and information, and any other suitable process.

The implementation of this policy is a matter for the future but the mechanics and the stimulus have been provided whereby Montana can profitably emulate and incorporate the experience of her sister states.

**TAXATION**

**Automobile Tax**

Chapter 103 (S.B. 166) which amends section 53-617, R.C.M. 1947, apparently was intended to provide for imposition of a sales (or use) tax on new cars, based on their port of entry list price rather than their factory list price. It is doubtful, however, that the bill has achieved this result, since it provides for a tax of a given per cent of the factory list price or port of entry list price, with no statement that the higher price is to be used or that, in the case of imported cars, the port of entry list price is to be used. The tax is applicable only to vehicles for which a Montana license is sought.

**Corporation License Tax**

Chapter 263 (H.B. 307) relates to deductions allowed in computing corporation license tax net income. It adds language to R.C.M. 1947, section 84-1502 to permit the computation of deductions on the accrual method of accounting. It disallows the deduction of salaries on which the recipient has not paid the Montana income tax, subject to a provision that salaries paid in securing income derived from outside the state are deductible if the corporation is taxed on that income. The bill also changes the language relating to the deduction of taxes; the only substantive change in that respect seems to be a disallowance of federal taxes on or measured by net income or profits.

**Income Tax**

*Non-Resident Officers of Corporations Doing Business in State; Partnerships*

Chapter 253 (H.B. 460), effective for years ending after June 30, 1959, amends R.C.M. 1947, section 84-4903 to provide for taxing salaries, fees, and other compensation paid to a non-resident officer or director of a corporation doing business in this state, to the extent that the compensation is deducted in computing the Montana corporation license tax. Whether the officer or director performs services within Montana is immaterial.
This bill adds a provision to the effect that, if a taxpayer's status changes from resident to non-resident or vice versa during a year, his exemptions are to be prorated in the proportion that his Montana adjusted gross income bears to his federal adjusted gross income.

The bill amends R.C.M. 1947, section 84-4911 to require that partners furnish copies of their federal partnership returns.

Non-Residents Receiving Payments from Montana Residents or Organizations

Chapter 208 (S.B. 105) provides for withholding of the Montana income tax from payments made by persons or organizations within Montana to non-residents for services performed in Montana, casual sales of property located in Montana, for leases, rentals or royalties from property located in Montana, or for prizes or winnings from or within Montana. An exception is made for payments for livestock or farm products raised or grown outside Montana and sold at a market within Montana.

Personal

Chapter 265 (H.B. 315) was intended to amend R.C.M. 1947, section 84-4902 so as to produce increased revenue by raising the rates of the personal income tax. The increases were to be as follows:

On the second one thousand dollars of taxable income, from $1\frac{1}{2}\%$ to 2%.

On the third one thousand dollars of taxable income, from 2% to 3%.

On the fourth and fifth thousand dollars of taxable income, from 2\frac{1}{2}\% and 3% to 4%.

On the sixth and seventh thousand dollars of taxable income, from 3\frac{1}{2}\% and 4% to 5%.

On taxable income in excess of seven thousand dollars, from 5% to 7%.

The provision for the effective date of the act however, states: "This act shall be in full force and effect from and after December 31, 1959." This seems to mean that the new rates cannot take effect until 1960. Apparently the legislature assumed that the new rates would apply to 1959 income, but a court probably would construe this act as not so applicable. This would follow from the plain meaning rule, under which a court will interpret a statute according to the plain meaning of its words. There have been cases in which courts have rejected the plain meaning rule and have refused to apply the language of a statute literally, on the ground that a literal application would lead to an absurd result or on the ground that the statute incorporated a clerical error which the court could correct. Here a literal application would not produce an absurd result; a legislature might well have intended to delay application of an increase in rates. Something similar to a clerical error seems, however, to have occurred. For material relating to the possibility of judicial correction of this apparent error, see 50 American Jurisprudence Statutes, section 232 (1944).
Inheritance Tax

Chapter 232 (S.B. 72), which amends R.C.M. 1947, section 91-4407 relating to the inheritance tax, provides for the deduction of attorneys' fees, filing fees, necessary expenses and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of the inheritance tax. This is in addition to the deductions previously allowed.

TORTS

Liability of the State

The defense of sovereign immunity to suit in tort has been partially waived by the state in Chapter 254 (H.B. 237). The new law gives the district courts exclusive jurisdiction to permit recovery against the state for property damage or personal injury resulting from the negligence or other wrong of any state employee acting within the scope of his employment, in circumstances where a private individual would be liable. The recovery is limited, however, to the extent of the insurance coverage carried by the state, and there may be no punitive damages assessed against the state. Litigation is under the control of the Attorney General, though he cannot settle any suit without the consent of the Board of Examiners and the court where the suit is pending.

Beyond the limits of insurance carried by the state, direct appropriation is still the only remedy. One such appropriation measure (H.B. 55) awarded $81,000 to a boy who had been blinded as a result of negligence on the part of state employees.

Other Proposals

Three other measures of interest in the area of tort law were killed—the Uniform Contribution Among Joint Tortfeasors Act (H.B. 291); a proposal substituting the rule of comparative negligence for the defense of contributory negligence (H.B. 384); and a bill permitting direct action against an automobile insurer who has a stake in the outcome of a lawsuit, or permitting joining him as a party. (H.B. 283).

UNIFORM AND MODEL LAWS

Acceptance of recommended legislation in the form of Model or Uniform Acts has been cyclic in Montana. The 1959 legislative session enacted six such proposals but killed or failed to act upon four others. The American Bar Association at a mid-year meeting in Chicago in February, 1959, called upon state and local bar associations to assist in securing the enactment of such legislation to the end that greater uniformity in the laws of the various states would be achieved. Montana has enacted approximately one-third of the acts promulgated and currently recommended by the Conference of Commissioners on Uniform State Laws. Seven other acts originally promulgated by the Conference but now superseded or withdrawn, are still in effect in Montana. In some instances, the 1959 enactments do not contain the most recent amendments or additions promulgated by the Conference. Closer liaison between the proponents of such meas-
ures and the Montana Commissioners on Uniform State Laws is necessary if such omissions are to be avoided. Greater support from groups affected is necessary if recommended model and uniform legislation is to be enacted.

Uniform Acts Enacted by Montana in 1959

Facsimile Signatures of Public Officials Act

Chapter 260 (H.B. 290) permits the use of facsimile signatures and seals on public securities and instruments of payment issued by the state or any of its instrumentalities or political subdivisions. It will dispense with the necessity of travel to New York City by officials to sign bonds manually. At least one manual signature is required on securities, and all signatures as to which facsimiles are authorized must first be registered. Under the Uniform Act as promulgated by the National Conference in 1958 all such registrations are filed with one designated state official; the act as adopted by Montana provides that signatures of state officers are registered with the Secretary of State and signatures of officers of political subdivisions are registered with the clerk of the subdivision.

Principal and Income Act

As promulgated by the National Conference in 1931 this Act provides for ascertainment of income and principal, and apportionment of receipts and expenses, as between tenants and remaindermen in trust and other estates in property. It operates except where the settlor has made other provisions. As to dividends on corporate stock, it follows the Massachusetts rule of awarding cash dividends to income and share dividends to principal. It provides separate rules for apportionment of unproductive property, property used in business, animals and natural resources. By 1958 this act had been adopted in 22 states.

The National Conference in 1958 amended the act by adding a section concerning probate income received by an executor and delivered by him to the trustee of a testamentary trust or to another legatee. Chapter 277 (H.B. 231) by which Montana adopted the act in 1959 did not include the 1958 amendment.

Insurers Liquidation Act

This Act, promulgated by the National Conference in 1939, had been adopted by 16 states by 1958. It is a reciprocal statute providing for liquidation, rehabilitation, and reorganization of insurance companies whose business and assets are in more than one state. It is included in the new insurance code enacted by Montana effective January 1, 1961 (Sections 566, 579-85, Chapter 286, H.B. 29). However, the Montana adoption intersperses with the various provisions of the Uniform Act provisions relating to liquidation of domestic companies.

Section 3 of Fiduciaries Act

Section 3 of the Uniform Fiduciaries Act of 1922 limits the liability of an issuer, in transfers of securities by fiduciaries, to cases where the issuer has actual knowledge of a breach of fiduciary duty or where the action amounts to bad faith. This section was superseded in 1958 by pro-
mulgation of the Uniform Simplification of Fiduciary Security Transfers Act, because the Commissioners found that transfer agents refused to rely on section 3 in view of the duty of inquiry imposed on issuers by the 1953 edition of the Uniform Commercial Code. The UCC defined "notice" for such purpose as including both "actual knowledge" and "reason to know." The 1958 act was therefore designed to limit the concepts of "knowledge" and "notice" for purposes of fiduciary security transfers, so as to eliminate burdensome documentation required by transfer agents. Montana, however, enacted in 1959 a statute the principal section of which is substantially the same as the superseded section 3 of the Fiduciaries Act. See Chapter 136, (H.B. 469). The Montana enactment, like those of Indiana and Pennsylvania, covers registration as well as transfer and expands the definition of "fiduciary" to include also nominees.

Other Acts Recommended by the National Conference for Adoption Where Need Exists, Enacted by Montana in 1959

Model Rule Against Perpetuities Act

The Model Act as promulgated by the National Conference in 1944 adopts the common-law rule against perpetuities. Chapter 213 (S.B. 104) included this provision, amended the existing statutory rule against suspension of the absolute power of alienation to prescribe the same period, and added a provision that, for inter vivos revocable trusts, the periods under both rules begin to run at the date of the trustor's death. In general the Montana statute follows a California statute enacted in 1951. Montana also enacted in 1959 a statute excluding from both rules pension and other employees' trusts. See Chapter 214 (S.B. 103), which is discussed more fully under the heading Perpetuities; Pension and Profit-Sharing Plans.

Uniform Unauthorized Insurers Act

This act, promulgated by the Commissioners in 1938, prohibits specified activities by or for insurers not authorized to transact business in the state, and prohibits institution of actions by unauthorized insurers. It provides for service of process in the state on unauthorized insurers, and requires them, before proceeding to defend in actions brought against them, to furnish bond or obtain a certificate of authority. By 1958 this act, or substantially similar legislation, had been adopted in 8 states, and a number of other states had enacted very similar legislation.

The new insurance code enacted by Montana effective January 1, 1961, contains a substantial adoption of the Uniform Act (Sections 176-83, Chapter 286, H.B. 29) although it varies in some details and uses the short title, "Unauthorized Insurers Process Act" (which has been used in several other states) rather than the short title promulgated by the National Conference. The Montana act includes a provision not in the Uniform Act, for allowance of attorneys' fees in actions against unauthorized insurers for vexatious refusal to make payment in accordance with contract.
Uniform and Model Acts Introduced in 1959 but Not Enacted

Model State Administrative Procedure Act (with additions). S.B. 179.
Died in Senate Committee.

Uniform Reciprocal Enforcement of Support Act, as revised 1958. S.B. 201. Passed Senate but was killed by adverse House Committee report.


Uniform Securities Act (substantial adoption). H.B. 145. Passed House but was killed in Senate.

An appropriation to pay Montana's pro rata share of the expense of the National Conference was requested but failed. It is questionable whether Montana should continue to participate in the Conference unless this responsibility is discharged.

The submission of recommended legislation is not merely a matter of deciding what model or uniform acts are feasible. A detailed check of existing statutes and the resolution of policy matters must be effected in the case of each proposed act. Amendments or repeal of existing statutory provisions may be required depending upon the consideration given to that particular area of the law by previous legislatures. As a consequence, one of the model acts recommended to the 1959 legislature, which failed to pass, required in excess of one thousand hours to prepare for submission.

Improvement in Montana law, as well as achieving uniformity with the laws of other states where that is desirable, demands more study and accommodation of model and uniform acts to the needs of the state.

WILLS

Can a testator incorporate by reference an inter vivos trust, particularly if that trust is revocable or amendable? If so, does his will create a testamentary trust? Chapter 185 (H.B. 430) settles these questions by providing that a testator may make a devise or bequest to the trustee of an inter vivos trust already or concurrently created by him, although the trust is revocable or amendable and even though the trust is in fact amended after the execution of the will. The bill further provides that unless the testator provides otherwise the property devised or bequeathed shall become part of the inter vivos trust, administered according to the terms of that trust, including any amendments.

WORKMEN'S COMPENSATION

Industrial Accident Board

In 1953 the Commissioner of Agriculture replaced the State Auditor as a member of the Industrial Accident Board; by Chapter 231 (S.B. 168) he is in turn supplanted by the director of the Bureau of Vocational Rehabilitation.

Hernia

The special provision for hernia cases in R.C.M. 1947, section 92-710, is repealed by Chapter 197 (H.B. 370). Hernia cases will now be governed by the general rules, which will likely prove to be more liberal in
operation than the special provision was. A hernia under most circumstances can properly be considered an industrial accident, even though it does not meet all the requirements of the repealed section.

Benefits

The legislature passed Substitute House Bill 333, which provided for substantially increased benefits, but the bill was vetoed by the Governor. It would have raised maximum compensation for temporary total disability from $42.50 to $57.50 per week, though it would have raised maximum compensation for partial disability, for permanent total disability or for death only from $42.50 to $44.50. The compensation period for scheduled injuries would on the whole have been markedly increased—in some cases more than doubled. And of incidental interest is the adoption in the bill of more technical terminology for the scheduled injuries. The waiting period before compensation becomes payable would have been shortened from a week to five days. The rules for increasing the number of dependents would have been liberalized. The Governor's veto message indicated that his principal objection was to the provision that despite the increased benefits there should be no increase in premiums unless the total claims paid out in any year should exceed 80 per cent of the total premiums collected in the previous year. This, the Governor thought, would tend to deplete the existing reserve fund before premiums could catch up with increased expenditures. Though vetoed, this bill indicates the shape of things to come.

Free Transcript

Chapter 170 (H.B. 402) requires the board to furnish to the claimant without cost a copy of the record made in a hearing. This copy, however, can apparently be demanded only after an action to review an order or decision of the board has been commenced, not in preparation for commencement of such action.

Assessment of Insurers

Assessment of insurers who operate under Plan 2 was nearly doubled. In the last legislature the assessment was changed from a flat $3 per policy to 1\(\frac{3}{4}\) per cent of the gross annual direct premiums (less return premiums) collected in Montana by the insurer. By Chapter 203 (S.B. 189) the assessment is increased to 3\(\frac{1}{4}\) per cent. The money assessed is available for payment of the costs of administering the Workmen's Compensation Act.

Occupational Disease

Perhaps the most significant legislation in the workmen's compensation field since the enactment of the original statute is the adoption of an occupational disease bill—Chapter 155 (S.B. 112). The principle of workmen's compensation is extended thereby beyond industrial accident,

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*This bill was adopted over two other proposals in the same session. House Bill 396 would have created a Special Disability Fund, similar to the Second-Injury Fund now existing under R.C.M. 1947, § 92-709A, and swallowing up the latter fund. Substitute House Bill 397 would have made silicosis, as such, compensable and would have divided liability to pay the award among all employers in whose employ the workman was exposed to silica dust.
with its requirement of a "fortuitous event" or sudden injury, to the whole realm of occupational disease.

The statute is entitled "The Occupational Disease Act of Montana," but we shall refer to it here simply as the act. It is comprised of seventy sections, one third the size of the entire Workmen's Compensation Act, and unnecessarily long. Though in form separate from the Workmen's Compensation Act, it is in essence only an extension of the scope of liability under that act. Dozens of sections are copied unchanged from the Workmen's Compensation Act, and much else is adopted by general or specific reference to the parent act. For example, of twenty-eight definitions some twenty are copied, even though there is also a general adoption of workmen's compensation definitions. Likewise, chapters nine and ten of the Workmen's Compensation Act are reproduced almost verbatim, and the same is true of numerous procedural sections, even after a general adoption of practice and procedure from workmen's compensation. Because of the general similarity between the two acts, mention will be made only of the more important new provisions.

The terms disability and disablement are used throughout to mean total incapacitation to work, whether temporary or permanent. There is no compensation under the act for partial incapacitation. Occupational disease within the meaning of the act includes only silicosis; poisoning by eighteen named chemical substances and by tamarack; X-ray or radioactive poisoning; and anthrax. A claim will be honored if one of these diseases follows as a natural and proximate result of exposure to a hazard characteristic of the employer's business.

Only the last employer in whose service the claimant was "injuriously exposed" to the hazard of disease (at least in part after the effective date of the act) is liable when the employee becomes totally incapacitated, and then only if disability results within 120 days of the termination of employment (or within one year in the Board's discretion). There is a special rule for silicosis: Only the last employer in whose employ the claimant was exposed to harmful quantities of silica dust for ninety workshifts after July 1, 1958, and for some period after the effective date of the act, is liable, and then only if within eight years before disablement the employee was exposed to harmful quantities of dust for 1000 shifts in Montana and if disablement follows within four years of termination of employment by the employer to be charged. If the employer should discharge a silicotic in order to avoid liability under the foregoing rule, he will still be liable if the claimant was employed by him 700 shifts since January 1, 1954. And if the employer ever discharges an employee who has an occupational disease which is not yet disabling (or when the employee quits to avoid aggravation of the disease) the IAB has discretion to make such award as it deems just, up to $5000.

Claims for death will be honored beyond the one or four year periods mentioned above, provided the death results during a period of continuous disability resulting from the disease.

There is also the problem of indiscriminate copying. For example, R.C.M. 1947, §§ 92-411 and -436, with their ambiguity concerning casual employment, were copied unchanged, and section 47 of the Act is duplicated in section 54.
The time of filing claims for disablement or death is counted from the date the claimant knew or should have known the nature of the disease and its connection with his employment, with a limit of thirteen months (or forty-nine months for disablement, but not death, by silicosis) from the last day of employment by the employer claimed against.

To examine claimants for silicosis, the Board is to appoint at least three lung specialists, and to examine other claimants it is to appoint at least thirty other physicians. Examination of the claimants is compulsory and the report of the examination is submitted to the Board. On the basis of the report (and apparently on the basis of permissive cross-examination of the lung specialist) the Board makes its determination. Any interested party may demand a hearing or may choose to demand a second medical examination. If the latter is chosen the evidence of the two examinations together is final and no evidence of other examinations may thereafter be admitted before the Board or in court.

Lump sum payments to the claimant are flatly prohibited, but the Board may order the paying agency to pay the claimant’s attorney in a lump and to deduct a proportionate amount from the claimant’s regular compensation check.

Hospital expenses are, as in workmen’s compensation, subject to an initial limit of $2500, but not, as there, to a limit of thirty-six months. Persons only partially disabled by occupational disease receive no compensation, but they are entitled to $1000 medical expenses.

Where an occupational disease and some non-compensable cause join to disable an employee, he may receive proportional compensation. Silicosis complicated by pulmonary tuberculosis is presumptively disabling and, if disablement is found, it is fully compensable.

The original bill included provision permitting an employer to require a waiver from new employees of any claim for aggravation of existing occupational disease. In its final form the statute permits the employer to require physical examination of both employees and applicants for employment and provides that “such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases.” This appears to make the employer liable only if he causes aggravation of existing disease.

Rights to suit at common law are technically available for those employees ineligible for compensation or who elect not to be covered by the act (though it is compulsory for employers), but recovery is difficult and the statute of limitations frequently a problem, especially for silicosis. For silicotics without possibility of recovery at common law or under the act, there is still available the special provision for public welfare benefits.

The employer has a special defense to the claim of an employee who knowingly and falsely represents in writing at the time of employment that he had not before been disabled, laid off or compensated for the same occupational disease.

Chapter 248 (H.B. 50) increased these benefits from $65 to $75 per month, but even they are limited to residents of ten years who are not gainfully employed and with income under $150 per month.