CHAPTER NO. 37

SENATE BILL NO. 125

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 16, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
January 25, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 27, 1979	Consent Calendar discussion.
January 29, 1979	Consent Calendar, do pass. Transmitted to second house.

IN THE HOUSE

January 30, 1979	Introduced and referred to Committee on Human Services.
February 5, 1979	Committee recommend bill be concurred in and placed on Consent Calendar. Report adopted.
February 8, 1979	Third reading Consent Calendar, concurred in.

IN THE SENATE

February 10, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

BILL NO. 125

INTRODUCED BY Taylor

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND SAFETY."

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

Section 1. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other ~~public~~ peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office."

Section 2. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) No person may operate a facility unless licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) Upon discontinuance of the operation or ~~of~~ upon transfer of ownership of a facility, the license must be returned to the department.

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(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted."

Section 3. Section 50-5-301, MCA, is amended to read:

"50-5-301. Preliminary submission of plans for approval. (1) The department may adopt rules to require an applicant or licensee who contemplates construction of, or alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility."

Section 4. Section 50-15-302, MCA, is amended to read:

"50-15-302. Decree of ~~divorce~~ dissolution or ~~annulment~~ declaration of invalidity of marriage. (1) At the same time a decree of ~~divorce~~ dissolution or ~~annulment~~ declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) the number of the cause of action;

(f) the county and judicial district where the action is filed; and

(g) the date of judgment and the party which was granted it."

Section 5. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of ~~divorce~~ dissolution of marriage, adoption, ~~and annulment~~ declaration of invalidity of marriage, or annulment of adoption. Before the 16th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of ~~divorce~~ dissolution of marriage, adoption, ~~annulment~~ declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department."

Section 6. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice

medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician."

Section 7. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and

the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305~~(1)~~(2), which guarantee or undertaking is false, except by a person who ~~relied~~ relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method ~~of~~ or process which as a trade secret is entitled to protection."

Section 8. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

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(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus-serum toxin act;

(c) a drug subject to ~~[section 17(a)(8) or 16(k) of this act]~~ 50-31-306(11)(m) or 50-31-307(1)(c) or section

503(b)(1) or 506 ~~of~~ the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug, ~~which, or the~~ drug container, or ~~labeling of~~ drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been

packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States, or~~ official National Formulary, or a supplement to any either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any

article specified in subsections (a), (b), or (c), but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

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(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(15) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(16) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(17) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(18) "Official compendium" means the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States~~, official National Formulary, or a supplement to ~~any~~ either of these.

(19) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(20) "Person" includes an individual, partnership, corporation, and association.

(21) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one or more other substances, is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(22) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(23) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(24) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104."

Section 9. Section 50-31-111, MCA, is amended to read:

"50-31-111. When labeling requirement complied with.

A requirement made by or under authority of this chapter that a word, statement, or other information ~~appearing~~ shall appear on the label ~~shall~~ is not ~~be considered to be~~ complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper."

Section 10. Section 50-31-303, MCA, is amended to read:

"50-31-303. Certain drug advertisements deemed false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated

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only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious."

Section 11. Section 50-31-305, MCA, is amended to read:

"50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under

authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.~~

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor."

Section 12. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any

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chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of

the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the

department or if consent is obtained under the federal act. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirement of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia; provided further that, in~~ In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a

reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with

respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying

mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 13. Section 50-32-208, MCA, is amended to read:

"50-32-208. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription ~~of a practitioner~~, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of ~~50-32-312~~ 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 14. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. The following dangerous drugs ~~listed in this section~~ are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital."

Section 15. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in

Schedule V. The following dangerous drugs ~~listed in this section~~ are included in Schedule V: ~~:~~ Any any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more noncarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit."

Section 16. Section 50-37-102, MCA, is amended to read:

"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans

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of the United States ~~army--navy--or-marine-corps~~ armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events."

Section 17. Section 50-38-304, MCA, is amended to read:

"50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives--dangerous" in conspicuous letters not less than 2 inches in ~~length~~ height."

Section 18. Section 50-51-106, MCA, is amended to read:

"50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be ~~fined~~ punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than

$200 for the second offense and, for the third and subsequent offenses, ~~by a fine of~~ not less than $200 and by imprisonment in the county jail not to exceed 90 days."

Section 19. Section 50-51-202, MCA, is amended to read:

"50-51-202. Application for license. ~~Applications~~ Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary."

Section 20. Section 50-61-118, MCA, is amended to read:

"50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this ~~law~~ chapter, the attorney general of the state or any county attorney of the county where ~~any such~~ the building is located shall bring an action against the owner, lessee, and occupants of ~~any--such~~ the building for an injunction enjoining the further occupancy of ~~such building~~ it until it is in compliance with this chapter. ~~Such~~ The action may be brought in the county where such building is located."

Section 21. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair, or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections, or defective heating apparatus, or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, ~~such--officer--should~~ he shall order ~~such~~ the structure to be repaired, torn down, or demolished, and all materials removed, and all dangerous conditions remedied.

(2) ~~Such~~ The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in ~~said~~ that court.

(3) A copy of the order filed as aforesaid, together with a written notice that ~~the same~~ it has been so filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the ~~said~~ court his objections or answer thereto within the time specified in 50-62-104,

shall be served upon the owner of the building or structure so directed to be altered, repaired, or demolished. If there be is a tenant occupying the building, service shall also be made upon ~~such occupant~~ him. ~~Such service~~ Service shall be made upon ~~such~~ the owner and occupant, if there be is one, personally either within or without the state.

(4) If the whereabouts of ~~such~~ the owner is unknown and ~~the--same~~ he cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of ~~said~~ the notice upon ~~such~~ the owner may be made by the clerk of the district court by publication of ~~the same~~ it once in each week for 3 successive weeks in a newspaper printed and published in the county in which ~~such~~ the building or structure is located and by posting a copy thereof in a conspicuous place upon ~~said~~ the building or structure, and the service so made ~~shall be deemed to be~~ is complete upon the expiration of the publication period. Proof of service of ~~said~~ the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 22. Section 50-70-114, MCA, is amended to read:

"50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or

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equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant ~~such~~ the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption ~~shall~~ may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section ~~shall~~ may be granted for a period to exceed 1 year, but ~~any such~~ an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, ~~such~~ after a complaint ~~having~~ has been made and duly considered at a public hearing held by the board on due notice, the board finds that

renewal is justified. No renewal ~~shall~~ may be granted except on application therefor. ~~Any such application~~ Application for renewal shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of ~~such~~ the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof ~~shall~~ is not be a right of the applicant or holder but shall be in the discretion of the board. ~~Any person adversely effected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review as provided by 50-70-111.~~

(6) Nothing in this section and no exemption, partial exemption, or renewal granted ~~shall~~ may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property."

Section 23. Section 50-71-325, MCA, is amended to read:

"50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code,

order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1), is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount

of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the ~~industrial--accident--administrative~~ division of workers' compensation earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply."

Section 24. Section 50-75-105, MCA, is amended to read:

"50-75-105. Rules governing inspectors. ~~Said~~ The division of workers' compensation shall ~~have-the-power-and it-shall-be-its-duty-to-provide~~ adopt rules under which ~~said~~ the inspectors of boilers, inspectors of mines, and coal mine ~~inspector~~ inspectors shall perform their duties~~, and the--division--may--require--them--in--addition--to---their statutory--duties,--to-make-the-annual-inspections,-reports, and--collections--required--by--the--safety--provisions---of~~

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~~[92-1206 to 92-1208, 92-1210, 92-1211, and 92-1212]~~."

Section 25. Section 50-75-107, MCA, is amended to read:

"50-75-107. Laws continued in force. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, ~~inspector of steamboats~~, inspectors of mines, and coal mine ~~inspector~~ inspectors not inconsistent with the provisions of this chapter are hereby continued in full force and effect."

-End-

Approved by Committee
on Public Health,Welfare
& Safety

BILL NO. 125

INTRODUCED BY Blaylock

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND SAFETY."

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

Section 1. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other ~~public~~ peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office."

Section 2. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) No person may operate a facility unless licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) Upon discontinuance of the operation or ~~of~~ upon transfer of ownership of a facility, the license must be returned to the department.

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(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted."

Section 3. Section 50-5-301, MCA, is amended to read:

"50-5-301. Preliminary submission of plans for approval. (1) The department may adopt rules to require an applicant or licensee who contemplates construction of, or alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility."

Section 4. Section 50-15-302, MCA, is amended to read:

"50-15-302. Decree of ~~divorce~~ dissolution or ~~annulment~~ declaration of invalidity of marriage. (1) At the same time a decree of ~~divorce~~ dissolution or ~~annulment~~ declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

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(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) the number of the cause of action;

(f) the county and judicial district where the action is filed; and

(g) the date of judgment and the party which was granted it."

Section 5. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of ~~divorce~~ dissolution of marriage, adoption, ~~and annulment~~ declaration of invalidity of marriage, or annulment of adoption. Before the 16th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of ~~divorce~~ dissolution of marriage, adoption, ~~annulment~~ declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department."

Section 6. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice

medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician."

Section 7. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and

the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305~~(1)~~(2), which guarantee or undertaking is false, except by a person who ~~relied~~ relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method ~~of~~ or process which as a trade secret is entitled to protection."

Section 8. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

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(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus-serum toxin act;

(c) a drug subject to ~~[section 17(a)(8) or 16(k) of this act]~~ 50-31-306(1)(m) or 50-31-307(1)(c) or section

503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug, ~~which, or the~~ drug container, or ~~labeling of~~ drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been

packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States, or~~ official National Formulary, or a supplement to ~~any~~ either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any

article specified in subsections (a), (b), or (c), but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

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(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(15) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(16) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(17) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(18) "Official compendium" means the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States~~, official National Formulary, or a supplement to ~~any~~ either of these.

(19) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(20) "Person" includes an individual, partnership, corporation, and association.

(21) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one or more other substances, is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(22) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(23) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(24) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104."

Section 9. Section 50-31-111, MCA, is amended to read:

"50-31-111. When labeling requirement complied with.

A requirement made by or under authority of this chapter that a word, statement, or other information ~~appearing~~ shall appear on the label ~~shall~~ is not ~~be considered to be~~ complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper."

Section 10. Section 50-31-303, MCA, is amended to read:

"50-31-303. Certain drug advertisements deemed false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated

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only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious."

Section 11. Section 50-31-305, MCA, is amended to read:

"50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under

authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.~~

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor."

Section 12. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any

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chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of

the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in thos pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the

department or if consent is obtained under the federal act. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeophathic Pharmacopoeia of the United States, it shall be subject to the requirement of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeophathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia; provided further that, in~~ In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a

reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with

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respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying

mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 13. Section 50-32-208, MCA, is amended to read:

"50-32-208. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription ~~of a practitioner,~~ reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of ~~50-32-312~~ 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 14. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. The following dangerous drugs ~~listed in this section~~ are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital."

Section 15. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in

Schedule V. The following dangerous drugs ~~listed in this section~~ are included in Schedule V: ~~Any~~ any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit."

Section 16. Section 50-37-102, MCA, is amended to read:

"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans

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of the United States ~~army, navy, or marine corps~~ armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events."

Section 17. Section 50-38-304, MCA, is amended to read:

"50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives--dangerous" in conspicuous letters not less than 2 inches in ~~length~~ height."

Section 18. Section 50-51-106, MCA, is amended to read:

"50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be ~~fined~~ punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than

$200 for the second offense and, for the third and subsequent offenses, ~~by a fine of~~ not less than $200 and by imprisonment in the county jail not to exceed 90 days."

Section 19. Section 50-51-202, MCA, is amended to read:

"50-51-202. Application for license. ~~Applications~~ Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary."

Section 20. Section 50-61-118, MCA, is amended to read:

"50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this ~~law~~ chapter, the attorney general of the state or any county attorney of the county where ~~any such~~ the building is located shall bring an action against the owner, lessee, and occupants of ~~any such~~ the building for an injunction enjoining the further occupancy of ~~such building~~ it until it is in compliance with this chapter. ~~Such~~ The action may be brought in the county where such building is located."

Section 21. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair, or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections, or defective heating apparatus, or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, ~~such officer should~~ he shall order ~~such~~ the structure to be repaired, torn down, or demolished, and all materials removed, and all dangerous conditions remedied.

(2) ~~Such~~ The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in ~~said~~ that court.

(3) A copy of the order filed as aforesaid, together with a written notice that ~~the same~~ it has been so filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the ~~said~~ court his objections or answer thereto within the time specified in 50-62-104,

shall be served upon the owner of the building or structure so directed to be altered, repaired, or demolished. If there be is a tenant occupying the building, service shall also be made upon ~~such occupant~~ him. ~~Such service~~ Service shall be made upon ~~such~~ the owner and occupant, if there be is one, personally either within or without the state.

(4) If the whereabouts of ~~such~~ the owner is unknown and ~~the same~~ he cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of ~~said~~ the notice upon ~~such~~ the owner may be made by the clerk of the district court by publication of ~~the same~~ it once in each week for 3 successive weeks in a newspaper printed and published in the county in which ~~such~~ the building or structure is located and by posting a copy thereof in a conspicuous place upon ~~said~~ the building or structure, and the service so made ~~shall be deemed to be~~ is complete upon the expiration of the publication period. Proof of service of ~~said~~ the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 22. Section 50-70-114, MCA, is amended to read:

"50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or

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equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant ~~such~~ the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption ~~shall~~ may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section ~~shall~~ may be granted for a period to exceed 1 year, but ~~any such~~ an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, ~~such~~ after a complaint ~~having~~ has been made and duly considered at a public hearing held by the board on due notice, the board finds that

renewal is justified. No renewal ~~shall~~ may be granted except on application therefor. ~~Any such application~~ Application for renewal shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of ~~such~~ the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof ~~shall~~ is not be a right of the applicant or holder but shall be in the discretion of the board. ~~Any person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review as provided by 50-70-111.~~

(6) Nothing in this section and no exemption, partial exemption, or renewal granted ~~shall~~ may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property."

Section 23. Section 50-71-325, MCA, is amended to read:

"50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code,

order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1), is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount

of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the ~~industrial--accident--administrative~~ division of workers' compensation earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply."

Section 24. Section 50-75-105, MCA, is amended to read:

"50-75-105. Rules governing inspectors. ~~Said~~ The division of workers' compensation shall ~~have-the-power-and it-shall-be-its-duty-to-provide~~ adopt rules under which ~~said~~ the inspectors of boilers, inspectors of mines, and coal mine ~~inspector~~ inspectors shall perform their duties~~, and the--division--may--require--them,--in--addition--to---their statutory--duties,--to-make-the-annual-inspections,-reports, and--collections--required--by--the--safety--provisions---of~~

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~~[92-1206-to-92-1208,-92-1210,-92-1211,-and-92-1212]~~."

Section 25. Section 50-75-107, MCA, is amended to read:

"50-75-107. Laws continued in force. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, ~~inspector-of-steamboats,~~ inspectors of mines, and coal mine ~~inspector~~ inspectors not inconsistent with the provisions of this chapter are hereby continued in full force and effect."

-End-

SENATE BILL NO. 125

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND SAFETY."

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

Section 1. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other ~~public~~ peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office."

Section 2. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) No person may operate a facility unless licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) Upon discontinuance of the operation or of upon transfer of ownership of a facility, the license must be returned to the department.

(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted."

Section 3. Section 50-5-301, MCA, is amended to read:

"50-5-301. Preliminary submission of plans for approval. (1) The department may adopt rules to require an applicant or licensee who contemplates construction of, or alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility."

Section 4. Section 50-15-302, MCA, is amended to read:

"50-15-302. Decree of divorce dissolution or annulment declaration of invalidity of marriage. (1) At the same time a decree of divorce dissolution or annulment declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) the number of the cause of action;

(f) the county and judicial district where the action is filed; and

(g) the date of judgment and the party which was granted it."

Section 5. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of ~~divorce~~ dissolution of marriage, adoption, ~~and annulment~~ declaration of invalidity of marriage, or annulment of adoption. Before the 16th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of ~~divorce~~ dissolution of marriage, adoption, ~~annulment~~ declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department."

Section 6. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice

medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician."

Section 7. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and

the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305~~(1)~~(2), which guarantee or undertaking is false, except by a person who ~~relied~~ relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method of or process which as a trade secret is entitled to protection."

Section 8. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus-serum toxin act;

(c) a drug subject to ~~[section 17(e)(8) or 16(k) of this act]~~ 50-31-306(1)(m) or 50-31-307(1)(c) or section

503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug, ~~which, or the~~ drug container, or ~~labeling of~~ drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been

packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States, or~~ official National Formulary, or a supplement to ~~any~~ either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any

article specified in subsections (a), (b), or (c), but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(15) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(16) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(17) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(18) "Official compendium" means the official United States Pharmacopoeia, ~~official Homeopathic Pharmacopoeia of the United States~~, official National Formulary, or a supplement to any either of these.

(19) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(20) "Person" includes an individual, partnership, corporation, and association.

(21) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one or more other substances, is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(22) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(23) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(24) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104."

Section 9. Section 50-31-111, MCA, is amended to read:

"50-31-111. When labeling requirement complied with.

A requirement made by or under authority of this chapter that a word, statement, or other information appearing shall appear on the label shall is not be--considered--to--be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper."

Section 10. Section 50-31-303, MCA, is amended to read:

"50-31-303. Certain drug advertisements deemed false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated

only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious."

Section 11. Section 50-31-305, MCA, is amended to read:

"50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under

authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.~~

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor."

Section 12. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any

chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of

the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the

department or if consent is obtained under the federal act. ~~Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeophathic Pharmacopoeia of the United States, it shall be subject to the requirement of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeophathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia; provided further that,~~ In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a

reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with

respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying

mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 13. Section 50-32-208, MCA, is amended to read:

"50-32-208. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription of-a-practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of ~~50-32-312~~ 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 14. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. The following dangerous drugs listed in this section are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital."

Section 15. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in

Schedule V. The following dangerous drugs listed in this section are included in Schedule V: Any any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit."

Section 16. Section 50-37-102, MCA, is amended to read:

"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans

of the United States ~~army, navy, or marine corps~~ armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events."

Section 17. Section 50-38-304, MCA, is amended to read:

"50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives--dangerous" in conspicuous letters not less than 2 inches in ~~length~~ height."

Section 18. Section 50-51-106, MCA, is amended to read:

"50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be ~~fined~~ punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than

$200 for the second offense and, for the third and subsequent offenses, ~~by a fine of~~ not less than $200 and by imprisonment in the county jail not to exceed 90 days."

Section 19. Section 50-51-202, MCA, is amended to read:

"50-51-202. Application for license. ~~Applications~~ Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary."

Section 20. Section 50-61-118, MCA, is amended to read:

"50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this ~~law~~ chapter, the attorney general of the state or any county attorney of the county where ~~any such~~ the building is located shall bring an action against the owner, lessee, and occupants of ~~any such~~ the building for an injunction enjoining the further occupancy of ~~such building~~ it until it is in compliance with this chapter. ~~Such~~ The action may be brought in the county where such building is located."

Section 21. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair, or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections, or defective heating apparatus, or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, ~~such officer should~~ he shall order ~~such~~ the structure to be repaired, torn down, or demolished, and all materials removed, and all dangerous conditions remedied.

(2) ~~Such~~ The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in ~~said~~ that court.

(3) A copy of the order filed as aforesaid, together with a written notice that ~~the same~~ it has been so filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the ~~said~~ court his objections or answer thereto within the time specified in 50-62-104,

shall be served upon the owner of the building or structure so directed to be altered, repaired, or demolished. If there be is a tenant occupying the building, service shall also be made upon ~~such occupant~~ him. ~~Such service~~ Service shall be made upon ~~such~~ the owner and occupant, if there be is one, personally either within or without the state.

(4) If the whereabouts of ~~such~~ the owner is unknown and ~~the same~~ he cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of ~~said~~ the notice upon ~~such~~ the owner may be made by the clerk of the district court by publication of ~~the same~~ it once in each week for 3 successive weeks in a newspaper printed and published in the county in which ~~such~~ the building or structure is located and by posting a copy thereof in a conspicuous place upon ~~said~~ the building or structure, and the service so made ~~shall be deemed to be~~ is complete upon the expiration of the publication period. Proof of service of ~~said~~ the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 22. Section 50-70-114, MCA, is amended to read:

"50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or

equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant ~~such~~ the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption ~~shall~~ may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section ~~shall~~ may be granted for a period to exceed 1 year, but ~~any such~~ an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, ~~such~~ after a complaint ~~having~~ has been made and duly considered at a public hearing held by the board on due notice, the board finds that

renewal is justified. No renewal ~~shall~~ may be granted except on application therefor. ~~Any such application~~ Application for renewal shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of ~~such~~ the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof ~~shall~~ is not be a right of the applicant or holder but shall be in the discretion of the board. ~~Any person adversely effected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review as provided by 50-70-111.~~

(6) Nothing in this section and no exemption, partial exemption, or renewal granted ~~shall~~ may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property."

Section 23. Section 50-71-325, MCA, is amended to read:

"50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code,

order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1), is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount

of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the ~~industrial--accident--administrative~~ division of workers' compensation earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply."

Section 24. Section 50-75-105, MCA, is amended to read:

"50-75-105. Rules governing inspectors. ~~Said~~ The division of workers' compensation shall ~~have-the-power-and it-shall-be-its-duty-to-provide~~ adopt rules under which ~~said~~ the inspectors of boilers, inspectors of mines, and coal mine ~~inspector~~ inspectors shall perform their duties~~,-and the--division--may--require--them,--in--addition--to---their statutory--duties,--to-make-the-annual-inspections,-reports, and--collections--required--by--the--safety--provisions---of~~

~~[92-1206 to 92-1208, 92-1210, 92-1211, and 92-1212]~~."

Section 25. Section 50-75-107, MCA, is amended to read:

"50-75-107. Laws continued in force. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, ~~inspector of steamboats~~, inspectors of mines, and coal mine ~~inspector~~ inspectors not inconsistent with the provisions of this chapter are hereby continued in full force and effect."

-End-