

HOUSE BILL NO. 828

Introduced: 02/15/83

Referred to Committee on Judiciary: 02/15/83

Hearing: 02/19/83

Died in Committee

1 *House* BILL NO. *828*
 2 INTRODUCED BY *Curtiss Ramsey Smith Smith Jones*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 VENUE STATUTES THAT REQUIRE OR ALLOW CERTAIN LEGAL ACTIONS
 6 OR APPEALS TO BE FILED IN THE FIRST JUDICIAL DISTRICT;
 7 AMENDING SECTIONS 13-27-316, 13-37-113, 15-1-303, 15-2-303,
 8 15-31-505, 15-70-111, 16-11-204, 32-1-912, 33-1-702,
 9 33-1-711, 33-2-1119, 33-2-1123, 39-3-212, 39-7-209,
 10 39-31-106, 44-1-901, 50-30-102, 61-4-209, 61-6-144,
 11 70-9-312, 72-14-301, 72-16-804, 75-20-404, 75-20-408,
 12 80-8-306, 81-22-103, 81-23-204, 82-4-141, 82-4-254,
 13 82-4-361, AND 82-4-441, MCA."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 13-27-316, MCA, is amended to read:
 17 "13-27-316. Court review of attorney general
 18 statements. (1) If the proponents of a ballot measure
 19 believe that the statement of purpose, the statements of
 20 implication of a vote, or the fiscal statement formulated by
 21 the attorney general pursuant to 13-27-312 do not satisfy
 22 the requirements of 13-27-312, they may, within 10 days of
 23 receipt of the notice from the secretary of state provided
 24 for in 13-27-202, file an action in the district court in
 25 and for the county of Lewis and Clark ~~or the county in which~~

1 ~~any of the proponents reside~~ challenging the adequacy of the
 2 statement and requesting the court to alter the statement.
 3 (2) If the opponents of a ballot measure believe that
 4 the statement of purpose, the statements of implication of a
 5 vote, or the fiscal statement formulated by the attorney
 6 general pursuant to 13-27-312 do not satisfy the
 7 requirements of 13-27-312, they may, within 10 days of the
 8 date of certification to the governor that the completed
 9 petition has been officially filed, file an action in the
 10 district court in and for the county of Lewis and Clark ~~or~~
 11 ~~the county in which any of the proponents reside~~ challenging
 12 the adequacy of the statement and requesting the court to
 13 alter the statement.
 14 (3) (a) Notice shall be served upon the secretary of
 15 state and upon the attorney general. The action takes
 16 precedence over other cases and matters in the district
 17 court. The court shall examine the proposed measure and the
 18 challenged statement and shall as soon as possible render a
 19 decision and certify to the secretary of state a statement
 20 which the court determines will meet the requirements of
 21 13-27-312.
 22 (b) A statement certified by the court shall be placed
 23 on the petition for circulation and on the official ballot.
 24 (4) A copy of the petition in final form must be filed
 25 in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court."

Section 2. Section 15-1-303, MCA, is amended to read:

"15-1-303. Penalty for refusal to furnish information.

(1) If any person shall refuse inspection of any books or records when requested by the department or its authorized agent or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable and may add to its assessment thus made not more than 20% thereof as a penalty for such refusal or neglect. The department shall immediately notify the person so assessed of its action, either by certified or registered mail or by personal service of such notice.

(2) Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed shall:

(a) within 20 days after receiving such notice, file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled; when the board shall then, from all

information presented to it or from its own investigation, make such assessment as to it seems just and equitable; or

(b) within 60 days after receiving such notice, appeal to the district court of Lewis and Clark County ~~or the county in which the party resides or has his principal place of business~~ from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom, together with a bond conditioned for the payment of such amount as the judgment of said court may require within 30 days after the entry of such judgment.

(3) Upon the hearing of such appeal, the court or the state tax appeal board shall determine whether the department was entitled to inspect such books or records or was entitled to the information requested by the department. If the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a

judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department."

Section 3. Section 15-2-303, MCA, is amended to read:

"15-2-303. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this part.

(2) Proceedings for review shall be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located (except the taxpayer may, at his option, file in the district court of the first judicial district) and serving a copy of the petition on the department of revenue or taxpayer within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after the decision thereon. The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review but failure to do so shall have no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

~~(3) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service~~

~~commission shall be instituted in the district court of the first judicial district.~~

(4)(3) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced."

Section 4. Section 15-70-111, MCA, is amended to read:

"15-70-111. Judicial review and appeals. Any final written determination by the director of the department of revenue under this chapter may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County or the county in which the party resides or has his principal place of business, and an appeal may be taken from the judgment of the district court to the supreme court."

Section 5. Section 33-1-702, MCA, is amended to read:

"33-1-702. Stay of action. (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within 10 days after such order is delivered shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed under:

(a) an order on hearing;

(b) an order pursuant and supplemental to an order on hearing; or

(c) an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court ~~for of the county in which he resides or has his principal place of business or of~~ Lewis and Clark County for a stay of the commissioner's proposed action."

Section 6. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County ~~or the county in which the party~~

~~resides or has his principal place of business~~ by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, ~~except that in~~ In appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus line agent, the person taking the appeal may at his option, in lieu of ~~the district court of Lewis and Clark County an appeal to one of the foregoing district courts,~~ take the appeal to the district court of the county of Montana in which the ~~insurer has its principal place of business or the~~ licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the license of an agent, solicitor, or surplus line agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a

1 copy of his order appealed from and a full and complete
 2 transcript, duly certified by the commissioner, of his
 3 record of the hearing upon which the order was issued,
 4 together with all exhibits and documentary evidence
 5 introduced thereat. If the appeal is from an action of the
 6 commissioner with respect to which a hearing was refused,
 7 the commissioner shall within such 20-day period make and
 8 return to the court a full and complete transcript, duly
 9 certified by him, of all documents on file in his office
 10 directly relating to the matter as to which such appeal is
 11 taken.

12 (4) Upon receipt of such transcripts and evidence, the
 13 court shall hear the matter de novo as soon as reasonably
 14 possible thereafter. Upon the hearing of the appeal, the
 15 court shall consider the evidence contained in the
 16 transcript, exhibits, and documents therein filed by the
 17 commissioner, together with such additional proper evidence
 18 as may be offered by any party to the appeal.

19 (5) After hearing the appeal, the court may affirm,
 20 modify, or reverse the order or action of the commissioner
 21 in whole or in part or remand the action to the commissioner
 22 for further proceedings in accordance with the court's
 23 direction.

24 (6) Costs shall be awarded as in civil actions.

25 (7) Appeal may be taken to the supreme court from the

1 judgment of the district court as in other civil cases to
 2 which the state is a party. A stay of the effectiveness of
 3 any such judgment may be made only by order of the supreme
 4 court upon the giving of such security as that court deems
 5 proper.

6 (8) This section shall not apply to appeals as to
 7 matters covered by chapter 16."

8 Section 7. Section 33-2-1123, MCA, is amended to read:
 9 "33-2-1123. Judicial review -- mandamus. (1) Any
 10 person aggrieved by any act, determination, rule, or order
 11 or any other action of the commissioner pursuant to this
 12 part may appeal therefrom to the district court for of the
 13 county in which that person resides or has his principal
 14 place of business or to the district court of Lewis and
 15 Clark County. The court shall conduct its review without a
 16 jury and by trial de novo, except that if all parties,
 17 including the commissioner, so stipulate, the review shall
 18 be confined to the record. Portions of the record may be
 19 introduced by stipulation into evidence in a trial de novo
 20 as to those parties so stipulating.

21 (2) The filing of an appeal pursuant to this section
 22 shall stay the application of any such rule, order, or other
 23 action of the commissioner to the appealing party unless the
 24 court, after giving such party notice and an opportunity to
 25 be heard, determines that such a stay would be detrimental

to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part may petition the district court ~~for of the county in which that person resides or has his principal place of business or to the district court of~~ Lewis and Clark County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith."

Section 8. Section 44-1-901, MCA, is amended to read:

"44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged has a right of appeal to the district court of ~~the county in which he resides or of~~ Lewis and Clark County.

(2) The appeal must be made within 10 days after the decision or determination of the division."

Section 9. Section 50-30-102, MCA, is amended to read:

"50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court ~~for the first judicial district of the county in which the~~

~~person who will be adversely affected resides or has his principal place of business or the district court for the first judicial district~~ and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

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

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent."

Section 10. Section 61-6-144, MCA, is amended to read:

"61-6-144. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the commissioner of insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan, and any insurance company affected, may appeal to the commissioner of insurance from any ruling or decision of the manager or committee designated to operate such plan. Any

person aggrieved hereunder by any order or act of the commissioner of insurance may, within 10 days after notice thereof, file a petition in the district court of the county in which he resides or has his principal place of business of Lewis and Clark County for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree."

Section 11. Section 70-9-312, MCA, is amended to read:

"70-9-312. Appeal to court from decision of tax board -- trial de novo. Any person aggrieved by a decision of the state tax appeal board or as to whose claim the board has failed to act within 90 days after the filing of the claim may commence an action in the district court of the county in which he resides or has his principal place of business of Lewis and Clark County to establish his claim. The proceeding shall be brought within 90 days after the decision of the state tax appeal board or within 180 days from the filing of the claim if the board fails to act. The action shall be tried de novo without a jury."

Section 12. Section 72-14-301, MCA, is amended to read:

"72-14-301. Filing of action -- service -- applicability of other procedural provisions. (1) Any persons ~~person~~ claiming property in the hands of the state treasurer ~~must~~ may bring an action in the district court of

the county in which he resides or has his principal place of business or of Lewis and Clark County, Montana, against the state treasurer.

(2) In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general, and one must be served upon the director of revenue.

(3) Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana."

Section 13. Section 72-16-804, MCA, is amended to read:

"72-16-804. Appeal from determination of department. Any person aggrieved by the determination of the department of revenue in any matter provided for in 72-16-802 or 72-16-803 may, within 30 days thereafter, appeal to the district court of the county in which he resides, of the county in which the property that is the subject of the department's determination is located, or of Lewis and Clark County by serving on the department a notice in writing setting forth his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon and within 10 days after the service of such notice on it the department shall

transmit full and complete copies of all original papers and records which have been filed with it in relation to such application to the clerk of said district court, and thereupon the district court shall have jurisdiction of such application and proceeding. Upon 10 days' notice given by either applicant or the department, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court or at chambers, as may be directed by the order of the court."

Section 14. Section 75-20-404, MCA, is amended to read:

"75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the

statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the ~~first-judicial-district-of-this-state-in-and-for-the-county~~ the county in which he resides or has his principal place of business or of Lewis and Clark County. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law."

Section 15. Section 81-22-103, MCA, is amended to read:

"81-22-103. New or amended rules -- mailing -- hearing -- judicial review. (1) Every new or amended rule proposed by the department under this chapter shall be mailed to each person licensed under this chapter who will be affected by the rule, at least 45 days before the date on which the rule becomes effective.

(2) On application in writing filed at least 15 days before the effective date of the proposal by a person licensed under this chapter, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within 30 days after the conclusion of the hearing, the department shall

1 make written findings and conclusions and a written decision
2 based on the hearing, determining whether the rule shall be
3 adopted. A new or amended rule adopted following the hearing
4 and conclusion may not take effect until 90 days after the
5 date of the decision.

6 (3) ~~The district court of the first judicial district~~
7 ~~has jurisdiction to review, modify, or set aside a decision~~
8 ~~adopting a new or amended rule under this chapter on~~
9 ~~petition made to it at any time before the effective date of~~
10 ~~the rule by a person claiming to be adversely affected by~~
11 ~~the decision. A person claiming to be adversely affected by~~
12 ~~a decision of the department to adopt a new or amended rule~~
13 ~~under this chapter may, at any time before the effective~~
14 ~~date of the rule, petition the district court of the county~~
15 ~~in which he resides or has his principal place of business~~
16 ~~or of Lewis and Clark County to review, modify, or set aside~~
17 ~~the decision of the department."~~

18 Section 16. Section 13-37-113, MCA, is amended to
19 read:

20 "13-37-113. Hiring of attorneys -- prosecutions. The
21 commissioner may hire or retain attorneys who are properly
22 licensed to practice before the supreme court of the state
23 of Montana to prosecute violations of chapters 35, 36, or 37
24 of this title. Any properly licensed attorney so retained
25 or hired shall exercise the powers of a special attorney

1 general, and he may prosecute, subject to the control and
2 supervision of the commissioner and the provisions of
3 13-37-124 and 13-37-125, any criminal or civil action
4 arising out of a violation of any provision of chapters 35,
5 36, or 37 of this title. All prosecutions shall be brought
6 in the state district court for the county in which a
7 violation has occurred or by mutual agreement of the
8 parties involved in the district court for Lewis and Clark
9 County. The authority to prosecute as prescribed by this
10 section includes the authority to:

11 (1) institute proceedings for the arrest of persons
12 charged with or reasonably suspected of criminal violations
13 of chapters 35, 36, or 37 of this title;

14 (2) attend and give advice to a grand jury when cases
15 involving criminal violations of chapters 35, 36, or 37 of
16 this title are presented;

17 (3) draw and file indictments, informations, and
18 criminal complaints;

19 (4) prosecute all actions for the recovery of debts,
20 fines, penalties, or forfeitures accruing to the state or
21 county from persons convicted of violating chapters 35, 36,
22 or 37 of this title; and

23 (5) do any other act necessary to successfully
24 prosecute a violation of any provision of chapters 35, 36,
25 or 37 of this title."

Section 17. Section 15-31-505, MCA, is amended to read:

"15-31-505. Subpoenas -- Investigation of income, and shifting. (1) Jurisdiction is hereby conferred upon the district court of the ~~first-judicial~~ county in which any witnesses reside or, by mutual agreement of the parties involved, in the district court of the state of Montana in and for the county of Lewis and Clark County to compel attendance of witnesses to testify before the department of revenue, together with the production of books and such other testimony by appropriate process.

(2) When the department has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business."

Section 18. Section 16-11-204, MCA, is amended to read:

"16-11-204. Wholesaler's sale without tax prepayment a misdemeanor -- penalty. Any wholesaler who shall sell any tobacco products other than cigarettes without first making payment of the tax provided for by this part in the manner and at the time specified shall be guilty of a misdemeanor and further shall be enjoined by an action pursued in the district court of the county in which the wholesaler resides or has his principal place of business or, by mutual agreement of the parties involved, in the district court of Lewis and Clark County-Montana, from making further sale of tobacco products other than cigarettes for a period not less than 1 month or more than 1 year."

Section 19. Section 32-1-912, MCA, is amended to read:

"32-1-912. Enforcement of notices or orders. The director may apply to the district court of the county in which the home office of the institution is located or, upon mutual agreement of the parties involved, to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under this part. The court has jurisdiction to require compliance therewith."

Section 20. Section 33-2-1119, MCA, is amended to read:

1 "33-2-1119. Voting of securities -- prohibition --
 2 injunction -- sequestration. (1) No security which is the
 3 subject of any agreement or arrangement regarding
 4 acquisition or which is acquired or to be acquired in
 5 contravention of the provisions of this part or of any rule
 6 or order issued by the commissioner hereunder may be voted
 7 at any shareholders' meeting or may be counted for quorum
 8 purposes, and any action of shareholders requiring the
 9 affirmative vote of a percentage of shares may be taken as
 10 though such securities were not issued and outstanding; but
 11 no action taken at any such meeting shall be invalidated by
 12 the voting of such securities unless the action would
 13 materially affect control of the insurer or unless the
 14 courts of this state have so ordered.

15 (2) If an insurer or the commissioner has reason to
 16 believe that any security of the insurer has been or is
 17 about to be acquired in contravention of the provisions of
 18 this part or of any rule or order issued by the commissioner
 19 hereunder, the insurer or the commissioner may apply to the
 20 district court ~~for Lewis and Clark County or to the district~~
 21 ~~court~~ for the county in which the insurer has its principal
 22 place of business or, if the insurer has no such principal
 23 place of business or upon mutual agreement of the parties
 24 involved, to the district court for Lewis and Clark County
 25 to enjoin any offer, request, invitation, agreement, or

1 acquisition made in contravention of 33-2-1113 or any rule
 2 or order issued by the commissioner thereunder to enjoin the
 3 voting of any security so acquired, to void any vote of such
 4 security already cast at any meeting of shareholders, and
 5 for such other equitable relief as the nature of the case
 6 and the interests of the insurer's policyholders, creditors,
 7 and shareholders or the public may require.

8 (3) In any case where a person has acquired or is
 9 proposing to acquire any voting securities in violation of
 10 this part or any rule or order issued by the commissioner
 11 hereunder, the district court ~~for Lewis and Clark County or~~
 12 ~~the district court~~ for the county in which the insurer has
 13 its principal place of business or, if the insurer has no
 14 such principal place of business or upon mutual agreement of
 15 the parties involved, the district court for Lewis and Clark
 16 County may, on such notice as the court deems appropriate,
 17 upon the application of the insurer or the commissioner
 18 seize or sequester any voting securities of the insurer
 19 owned directly or indirectly by such person and issue such
 20 orders with respect thereto as may be appropriate to
 21 effectuate the provisions of this part. Notwithstanding any
 22 other provisions of law, for the purposes of this part the
 23 situs of the ownership of the securities of domestic
 24 insurers shall be deemed to be in this state."

25 Section 21. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of commissioner's determination. A determination by the commissioner of labor and industry made after a hearing as provided for in parts 2 and 4 of this chapter may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business or ~~in, if the employer has no such principal place of business or upon mutual agreement of the parties involved, to the district court~~ of the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination."

Section 22. Section 39-7-209, MCA, is amended to read:

"39-7-209. Court enforcement of commissioner's decision. (1) A decision by the commissioner pursuant to 39-7-207 may be enforced by the district court if the commissioner applies to the court, within 60 days from date of decision, for an order enforcing the decision and if the time provided to initiate judicial review by the employer has passed pursuant to Title 2, chapter 4, part 7.

(2) The commissioner shall apply to the district court of the county in which the employer has its principal place of business or ~~in, if the employer has no such principal~~

~~place of business or upon mutual agreement of the parties involved, to the district court~~ of the first judicial district of the state.

(3) A proceeding under this section is not a review of the merits of the commissioner's decision."

Section 23. Section 39-31-106, MCA, is amended to read:

"39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which ~~the--investigations--or--the--public--hearings--are--taking place--or such person resides or, upon mutual agreement of the parties involved,~~ the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt."

Section 24. Section 61-4-209, MCA, is amended to read:

"61-4-209. Cease and desist orders. When the division has reasonable cause to believe, from information furnished

to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the division shall file an action in the district court of ~~the county in which that person resides or has his principal place of business or, upon mutual agreement of the parties involved, the district court~~ of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions."

Section 25. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter -- civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this

chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than \$10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the ~~county in which the facility is located or of the county in which the person constructing or operating the facility has his principal place of business or, upon mutual agreement of the parties involved, of the~~ first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the ~~county in which the facility is located or of the county in which the person constructing or operating the facility has his principal place of business~~

~~or, upon mutual agreement of the parties involved, of the~~
 first judicial district of Montana for injunctive or other
 appropriate relief against the violation and to enforce this
 chapter or a certificate issued hereunder. Upon a proper
 showing, a permanent or preliminary injunction or temporary
 restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and
 bring legal actions to accomplish the enforcement through
 its own legal counsel.

(5) All fines and penalties collected shall be
 deposited in the earmarked revenue fund for the use of the
 department in administering this chapter."

Section 26. Section 80-8-306, MCA, is amended to read:

"80-8-306. Penalties. (1) Any person convicted of
 violating any of the provisions of this chapter or the rules
 issued thereunder or who may misrepresent, impede, obstruct,
 hinder, or otherwise prevent or attempt to prevent the
 department or its duly authorized agent in performance of
 its duty in connection with the provisions of this chapter
 shall be adjudged guilty of a misdemeanor and shall be fined
 not less than \$100 but not more than \$500 or imprisoned in
 the county jail for a term not to exceed 6 months, or both.

(2) The department or its authorized representative is
 hereby authorized to apply to the district court of the
 county or any county wherein a violation is about to occur

or has occurred ~~or, upon mutual agreement of the parties~~
~~involved, to the district court of Lewis and Clark County~~ to
 grant a temporary or permanent injunction restraining any
 person from violating or continuing to violate any of the
 provisions of this chapter or any rule promulgated under the
 chapter notwithstanding the existence of other remedies of
 law. ~~When a person makes pesticide applications in more than~~
~~one county on a commercial basis without a license or permit~~
~~or operates in violation of a lawful written order of the~~
~~department in more than one county, the district court of~~
~~Lewis and Clark County has concurrent jurisdiction with the~~
~~district court of any other county wherein a violation has~~
~~occurred or is about to occur and the department may select~~
~~and proceed in the court most appropriate under the~~
 circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter is to be construed as
 requiring the department or its authorized agent to report
 minor violations of the chapter for prosecution or for the
 institution of seizure proceedings when it believes the
 public interest will be best served by other remedial
 action, by a suitable notice of warning in writing, or by a
 lawful written order; nor is any part of this chapter to be
 construed to apply to common carriers transporting shipments
 tendered to them by the general public.

(4) Any person who with intent to defraud uses or

1 reveals information relative to formulas of products
2 acquired under the authority of 80-8-201 shall, upon
3 conviction, be fined not more than \$500 or imprisoned for
4 not more than 1 year, or both."

5 Section 27. Section 81-23-204, MCA, is amended to
6 read:

7 "81-23-204. Declining, suspending, and revoking
8 licenses -- penalties in lieu of suspension or revocation.
9 (1) The department may refuse to grant a license or may
10 suspend or revoke a license already granted for due cause
11 upon due notice and after hearing. The violation of any
12 provisions of this chapter or of any lawful order or rule of
13 the board or department, the failure or refusal to make
14 required statements or reports, or failure to pay license or
15 assessment fees are causes for which the department may, at
16 its discretion, suspend or revoke a license.

17 (2) In place of suspension or revocation of a license,
18 the department may assess a civil penalty not to exceed \$500
19 per day for each daily failure to comply with or each daily
20 violation of the provisions of this chapter or of any lawful
21 order or rule of the department or board. If the person
22 against whom a civil penalty is assessed fails to pay the
23 civil penalty immediately, the department shall collect the
24 civil penalty by a civil proceeding in the district court of
25 the county in which the person resides or has his principal

1 place of business or, upon mutual agreement of the parties
2 involved, in the district court of the first judicial
3 district. This penalty shall be construed as civil and not
4 criminal in nature. Any moneys received by the department as
5 a result of collection of civil penalties shall be paid into
6 the earmarked revenue fund as provided by 81-23-403."

7 Section 28. Section 82-4-141, MCA, is amended to read:

8 "82-4-141. Violation -- penalty. (1) A person or
9 operator who violates any of the provisions of this part or
10 rules or orders adopted under this part shall pay a civil
11 penalty of not less than \$100 or more than \$1,000 for the
12 violation and an additional civil penalty of not less than
13 \$100 or more than \$1,000 for each day during which a
14 violation continues and may be enjoined from continuing such
15 violations as provided in this section. These penalties
16 shall be recoverable in any action brought in the name of
17 the state of Montana by the attorney general in the district
18 court of the ~~first judicial county in which the person or~~
19 ~~operator has his principal place of business or in which the~~
20 ~~land involved is located or, by mutual agreement of the~~
21 ~~parties involved, in the district court of this state in and~~
22 ~~for the county of Lewis and Clark or in the district court~~
23 ~~having jurisdiction of the defendant county.~~

24 (2) The attorney general shall, upon the request of
25 the commissioner, sue for the recovery of the penalties

provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense."

Section 29. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty. (1) A person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than

\$750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is

complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first ~~judicial county in which the person or operator has his principal place of business or in which the land involved is located or, by mutual agreement of the parties involved, in the district court of this state in and for the county of Lewis and Clark--or the district having jurisdiction over the defendant county.~~

(3) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of

the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part or any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or

other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both."

Section 30. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such

violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the ~~first-judicial county in which the~~ person has his principal place of business or in which the land involved is located or, by mutual agreement of the parties involved, in the district of this state in -- and -- for the county ~~court~~ of Lewis and Clark or in the ~~district court~~ having jurisdiction of the defendant county.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part."

Section 31. Section 82-4-441, MCA, is amended to read:

"82-4-441. Penalty -- enforcement. (1) A person who violates any of the provisions of this part or rules adopted thereunder shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation, and the person may be enjoined from continuing such violation as provided in this section. These penalties are recoverable in an action

1 brought in the name of the state of Montana by the attorney
2 general in the district court having~~---jurisdiction--of--the~~
3 defendant ~~of the county in which the person has his~~
4 ~~principal place of business or in which the land involved is~~
5 located or, by mutual agreement of the parties involved, in
6 the district court of the first judicial district. Penalty
7 money shall be credited to the general fund.

8 (2) The attorney general shall, upon the request of
9 the department, sue for the recovery of the penalties
10 provided for in this section and bring an action for a
11 restraining order or a temporary or permanent injunction
12 against an operator or other person violating or threatening
13 to violate an order adopted under this part."

-End-

STATE OF MONTANA

REQUEST NO. 454-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, 19 83, there is hereby submitted a Fiscal Note for House Bill 828 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 828 revises the venue statutes that require certain legal actions or appeals to be filed in the First Judicial District.

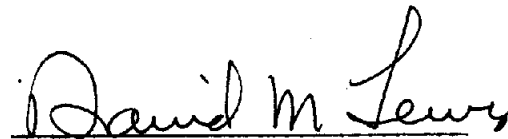
ASSUMPTIONS:

- 1) The Attorney General would be effected by venue on approximately 15 cases each year.
- 2) Additional travel expense would be required by this act.

FISCAL IMPACT:

Travel and per diem:	<u>FY84</u>	<u>FY85</u>	<u>Total Biennium</u>
3 days per case @ 15 cases per year = 45 days			
Per diem:			
\$28 x 45 days	\$1,260	\$1,260	\$2,520
\$15.50 x 45 days	698	698	1,396
Milage: 9,500 miles @ .21¢	2,000	2,000	4,000
TOTAL EXPENSES:	<u>\$3,958</u>	<u>\$3,958</u>	<u>\$7,916</u>

FISCAL NOTE 16: K/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83