

HOUSE BILL NO. 336

INTRODUCED BY SIMPKINS
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

JANUARY 22, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

FEBRUARY 13, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 14, 1991 PRINTING REPORT.

FEBRUARY 16, 1991 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 18, 1991 ENGROSSING REPORT.

FEBRUARY 19, 1991 THIRD READING, PASSED.
 AYES, 93; NOES, 6.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 16, 1991 ON MOTION, CONSIDERATION PASSED
 UNTIL THE 58TH LEGISLATIVE DAY.

 ON MOTION, TAKEN FROM SECOND READING
 AND REREFERRED TO THE COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

MARCH 26, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 28, 1991 SECOND READING, CONCURRED IN.

APRIL 1, 1991 THIRD READING, CONCURRED IN.

AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 336

INTRODUCED BY Sen. ...

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO RETAIN A PENALTY ASSESSED AN EMPLOYER FOR FAILURE TO PAY WAGES DUE; AUTHORIZING THE DEPARTMENT TO ENTER A DEFAULT ORDER IN A WAGE CLAIM AND TO ENFORCE THE DEFAULT ORDER; ESTABLISHING A PRIORITY FOR BOND PAYMENT UNDER THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-3-206, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-3-206, MCA, is amended to read:

"39-3-206. Penalty for failure to pay wages at times specified in law. Any An employer, as ~~such-employer-is~~ defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part ~~shall-be is~~ guilty of a misdemeanor. A penalty ~~shall must~~ also be assessed against and paid by ~~such the~~ employer ~~and-become-due-such--employee--as--follows--a--sum~~ equivalent--to--the--fixed-amount-of to the department in an

1 amount equal to 5% of the wages due and unpaid shall--be
2 assessed for each day, except Sundays and legal holidays,
3 upon-which-such that the employer's failure to pay continues
4 after the day upon-which-such wages were due, except--that
5 such However, the failure shall--not--be--deemed is not
6 considered to continue more than 20 days after the date such
7 the wages were due."

Section 2. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of administrative decision. A department default order, a decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision."

Section 3. Section 39-3-216, MCA, is amended to read:

"39-3-216. Hearing. (1) If the department determines that a wage claim exists and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and owing. The department may enforce the default order pursuant to



1 39-3-212.

2 ~~†1~~(2) When the department determines that a wage claim
3 exists and if it fails to settle the claim with the parties,
4 it shall cause the matter to be brought to a hearing before
5 a department hearings officer. The hearing must be conducted
6 according to contested case procedures under Title 2,
7 chapter 4, part 6, except that the hearings officer is not
8 bound by statutory or common-law rules of evidence.

9 ~~†2~~(3) The decision of the hearings officer is final
10 unless further review is initiated pursuant to 39-3-217
11 within 15 days after the decision is mailed to each party's
12 last-known address. The period may be extended by the board
13 for good cause."

14 **Section 4.** Section 39-3-604, MCA, is amended to read:

15 "39-3-604. Bond to be filed -- bond requirements --
16 payment -- exception. (1) Except as provided in 39-3-605 and
17 subsection (4) ~~of--this--section~~, a person operating a
18 business as a restaurant, bar, or tavern is required to file
19 a bond equal to at least double the amount of the projected
20 semimonthly payroll with the commissioner. The bond ~~shall~~ at
21 all-times must be kept in full force and effect, and any
22 cancellation or revocation of the bond or withdrawal of the
23 sureties from the bond is grounds for enjoining the
24 operation of business, as provided for in 39-3-607, until a
25 new bond of like tenure and effect is filed and approved.

1 (2) The bond required by subsection (1) ~~of-this-section~~
2 must be filed with the commissioner. The state of Montana
3 must be named as the obligee, with good and sufficient
4 sureties to be approved by the attorney general.

5 (3) The bond must ~~be-conditioned--to~~ assure that the
6 employees who perform labor or other personal services are
7 guaranteed their wages ~~in-the-event~~ if the person ceases
8 operation of the business for any reason and is unable to
9 pay the wages due and owing the employees and ~~to~~ must assure
10 payment due the department as a result of payroll taxes.

11 (4) The bond must first be used to pay wages due and
12 owing employees, then to pay payroll taxes due the
13 department. The bond may not be used to pay an amount due
14 the state compensation mutual insurance fund established in
15 39-71-2313.

16 ~~†4~~(5) Except as provided in 39-3-605(2), this section
17 does not apply to any person who has operated the same
18 restaurant, bar, or tavern continuously since October 1,
19 1980."

20 **Section 5.** Section 39-3-605, MCA, is amended to read:

21 "39-3-605. Waiver of bond -- new or additional bond --
22 exemption. (1) After 3 years of compliance with this part,
23 the commissioner shall waive the provisions of 39-3-604 for
24 any person showing compliance with the applicable provisions
25 of the Fair Labor Standards Act and all the applicable laws

1 administered by the department.

2 (2) Notwithstanding 39-3-604~~(4)~~(5) and subsection (1)
3 of this section, the commissioner may require a person
4 operating a restaurant, bar, or tavern, including a person
5 who has been in business since October 1, 1980, or for over
6 3 years, to file a new bond or a bond of a greater amount
7 than double the semimonthly payroll whenever the person
8 operating a restaurant, bar, or tavern defaults on the
9 payment of wages, payroll taxes, or workers' compensation
10 premiums.

11 (3) A person who owns and operates a restaurant, bar,
12 or tavern is exempt from the provisions of 39-3-604 to the
13 extent that 39-3-604 would otherwise require filing of a
14 bond based on the payroll and wages attributable to members
15 of the immediate family of the person who owns and operates
16 the restaurant, bar, or tavern."

17 NEW SECTION. **Section 6.** Effective date. [This act] is
18 effective July 1, 1991.

19 NEW SECTION. **Section 7.** Applicability. [This act]
20 applies to all wage claims filed with the department of
21 labor and industry on or after July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0336, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill authorizing the Department of Labor and Industry to retain a penalty assessed an employer for failure to pay wages due and to enter and enforce a default order in a wage claim; establishing a priority for bond payment under the Restaurant, Bar and Tavern Wage Protection Act; and prohibiting bond payment to the State Compensation Mutual Insurance Fund.

ASSUMPTIONS:

1. HB0336 would have no fiscal impact on the State Fund and would not increase or decrease operating costs for wage claim activities conducted by the Department of Labor and Industry.
2. Revenues generated from penalties authorized under HB0336 would be highly variable. The amount of penalty revenue that could have been collected under HB0336 would have been \$18,456 in FY89 and \$63,557 in FY90.
3. Penalty revenues would be deposited to the account from which wage claim activities are funded.

FISCAL IMPACT:

Expenditures:

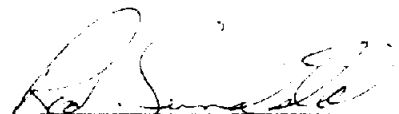
No impact.

Revenues:

An increase in penalty revenues would occur. If consistent with the experience of FY89-FY90, revenues would increase by \$81,000 over the biennium. The additional penalty revenues would offset UI administrative tax revenues used to support wage claim activities.

TECHNICAL NOTE:

Section 4, subsections (3) and (4), refer to payroll taxes due to the Department of Labor and Industry. As of July 1, 1991, the employer payroll tax will be collected by the Department of Revenue.



ROD SUNDSTED, BUDGET DIRECTOR 1-26-91 DATE
Office of Budget and Program Planning



RICHARD SIMKINS, PRIMARY SPONSOR 1-29-91 DATE

Fiscal Note for HB0336, as introduced.

HB 336

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 336

INTRODUCED BY SIMPKINS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
DEPARTMENT--OF--LABOR--AND--INDUSTRY--TO--RETAIN PAYMENT TO AN
EMPLOYEE OF A PENALTY ASSESSED AN EMPLOYER FOR FAILURE TO
PAY WAGES DUE; REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE
ANNUALIZED INTEREST ON UNPAID WAGES; AUTHORIZING THE
DEPARTMENT TO ENTER A DEFAULT ORDER IN A WAGE CLAIM AND TO
ENFORCE THE DEFAULT ORDER; ESTABLISHING A PRIORITY FOR BOND
PAYMENT UNDER THE RESTAURANT, BAR, AND TAVERN WAGE
PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE STATE
COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS
39-3-206, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA;
AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-3-206, MCA, is amended to read:

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specified in law. Any (1) An employer, as such-employer-is
defined in this part, who fails to pay any of his employees
as provided in this part or violates any other provision of
this part ~~shall be~~ is guilty of a misdemeanor. A penalty
~~shall must~~ MAY also be assessed against and paid by ~~such the~~

~~employer and--become--due--such--employee-as-follows--a-sum
equivalent-to-the-fixed-amount-of to the department EMPLOYEE
in an amount ~~equal-to-5%~~ NOT TO EXCEED 100% of the wages due
and unpaid ~~shall-be-assessed~~ for each day, except Sundays
and legal holidays, ~~upon--which--such~~ that the employer's
failure to pay continues after the day ~~upon-which-such~~ wages
were due, BUT NOT LESS THAN THE WAGES DUE PLUS INTEREST
PAYMENT REQUIRED IN SUBSECTION (2)7. ~~except--that--such
However,--the--failure--shall--not--be--deemed--is--not--considered
to--continue--more--than--20--days--after--the--date--such--the--wages
were--due--~~~~

(2) THE EMPLOYER SHALL ALSO PAY THE EMPLOYEE ANNUALIZED
INTEREST ON THE UNPAID WAGES FROM THE DATE THE WAGES WERE
DUE. THE INTEREST MUST BE CALCULATED BY THE DEPARTMENT AND
COMPOUNDED ANNUALLY, BUT THE ANNUALIZED RATE MAY NOT EXCEED
2 PERCENTAGE POINTS A YEAR ABOVE THE PRIME RATE OF MAJOR NEW
YORK BANKS ON THE DATE OF SETTLEMENT."

Section 2. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of administrative
decision. A department default order, a decision of the
hearings officer, if the decision is not appealed to the
board, or a decision of the board, if judicial review is not
sought, may be enforced by application by the commissioner
to a district court for an order or judgment enforcing the
decision. The commissioner shall apply to the district court

SECOND READING



1 where the employer has its principal place of business or in
2 the first judicial district of the state. A proceeding under
3 this section is not a review of the validity of the
4 administrative decision."

5 **Section 3.** Section 39-3-216, MCA, is amended to read:

6 "39-3-216. Hearing. (1) If the department determines
7 that a wage claim exists and the employer does not appeal
8 the determination, the department may enter a default order
9 against the employer for the amount of wages due and owing.
10 The department may enforce the default order pursuant to
11 39-3-212.

12 ~~(1)~~(2) When the department determines that a wage claim
13 exists and if it fails to settle the claim with the parties,
14 it shall cause the matter to be brought to a hearing before
15 a department hearings officer. The hearing must be conducted
16 according to contested case procedures under Title 2,
17 chapter 4, part 6, except that the hearings officer is not
18 bound by statutory or common-law rules of evidence.

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20 unless further review is initiated pursuant to 39-3-217
21 within 15 days after the decision is mailed to each party's
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3 business as a restaurant, bar, or tavern is required to file
4 a bond equal to at least double the amount of the projected
5 semimonthly payroll with the commissioner. The bond ~~shall~~ at
6 ~~all-times~~ must be kept in full force and effect, and any
7 cancellation or revocation of the bond or withdrawal of the
8 sureties from the bond is grounds for enjoining the
9 operation of business, as provided for in 39-3-607, until a
10 new bond of like tenure and effect is filed and approved.

11 (2) The bond required by subsection (1) ~~of-this-section~~
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13 must be named as the obligee, with good and sufficient
14 sureties to be approved by the attorney general.

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19 payment of wages, OR payroll taxes, ~~or workers' compensation~~
20 ~~premiums.~~

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22 or tavern is exempt from the provisions of 39-3-604 to the
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24 bond based on the payroll and wages attributable to members
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2 NEW SECTION. **Section 6.** Effective date. [This act] is
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6 labor and industry on or after July 1, 1991.

-End-

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 8 PAYMENT REQUIRED IN SUBSECTION (2)7. except--that--such
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THIRD READING

HB 336



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11 (2) The bond required by subsection (1) ~~of--this--section~~
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 23 department. The bond may not be used to pay an amount due
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 25 39-71-2313.

1 ~~(4)~~(5) Except as provided in 39-3-605(2), this section
2 does not apply to any person who has operated the same
3 restaurant, bar, or tavern continuously since October 1,
4 1980."

5 **Section 5.** Section 39-3-605, MCA, is amended to read:

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7 exemption. (1) After 3 years of compliance with this part,
8 the commissioner shall waive the provisions of 39-3-604 for
9 any person showing compliance with the applicable provisions
10 of the Fair Labor Standards Act and all the applicable laws
11 administered by the department.

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15 who has been in business since October 1, 1980, or for over
16 3 years, to file a new bond or a bond of a greater amount
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18 operating a restaurant, bar, or tavern defaults on the
19 payment of wages, OR payroll taxes, ~~or workers' compensation~~
20 premiums.

21 (3) A person who owns and operates a restaurant, bar,
22 or tavern is exempt from the provisions of 39-3-604 to the
23 extent that 39-3-604 would otherwise require filing of a
24 bond based on the payroll and wages attributable to members
25 of the immediate family of the person who owns and operates

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2 NEW SECTION. **Section 6.** Effective date. [This act] is
3 effective July 1, 1991.

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5 applies to all wage claims filed with the department of
6 labor and industry on or after July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 14, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 336 (third reading copy -- blue), respectfully report that House Bill No. 336 be amended and as so amended be concurred in:

1. Page 1, line 25.

Following: "must"

Strike: "MAY"

Insert: "must"

2. Page 2, line 15.

Following: "NOT"

Strike: "EXCEED"

Insert: "be less than"

Signed: _____


Thomas E. Towe, Vice-Chairman

LB 3/14/91
Amd. Coord.

SB 3/15 2:00
Sec. of Senate

SENATE

HB 336

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 26, 1991

Page 2 of 2
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 336 (third reading copy -- blue), respectfully report that House Bill No. 336 be amended and as so amended be concurred in:

Strike the Labor and Employment Relations Standing Committee Report dated March 14, 1991 in its entirety and concur in the following amendments:

1. Title, line 5.
Following: "AN ACT"
Strike: "AUTHORIZING"
Insert: "REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE"

2. Title, lines 6 and 7.
Following: "REPEAL" on line 6
Strike: remainder of line 6 through "EMPLOYER" on line 7

3. Title, line 15.
Following: "39-3-206,"
Insert: "39-3-208,"

4. Page 1, line 25.
Following: "must"
Strike: "MAY"
Insert: "must"

5. Page 2, lines 7 and 8.
Following: "due"
Strike: remainder of line 7 through "(2)" on line 8

6. Page 2, line 15.
Following: "NOT"
Strike: "EXCEED"
Insert: "be less than"

7. Page 2, line 18.

Following: line 17

Insert: "(3) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due, including interest, if the employer is found in violation of this part.

Section 2. Section 39-3-208, MCA, is amended to read: "39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such the employee may sue to recover his wages earned, together with the 5% penalty and interest specified in 39-3-206 or separately to recover the penalty and interest if the wages have been paid."

Renumber: subsequent sections

Signed: 
Thomas E. Towe, Vice Chairman

JM 3-26-91
Amd. Coord.

SB 306 11:20
Sec. of Senate

HOUSE BILL NO. 336

INTRODUCED BY SIMPKINS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE THE DEPARTMENT OF LABOR AND INDUSTRY TO RETAIN PAYMENT TO AN EMPLOYEE OF A PENALTY ASSESSED AN EMPLOYER FOR FAILURE TO PAY WAGES DUE; REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES; AUTHORIZING THE DEPARTMENT TO ENTER A DEFAULT ORDER IN A WAGE CLAIM AND TO ENFORCE THE DEFAULT ORDER; ESTABLISHING A PRIORITY FOR BOND PAYMENT UNDER THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-3-206, 39-3-208, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-3-206, MCA, is amended to read:

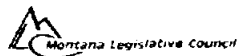
"39-3-206. Penalty for failure to pay wages at times specified in law. Any (1) An employer, as such employer is defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of

this part shall be is guilty of a misdemeanor. A penalty shall ~~must~~ MAY MUST MAY MUST also be assessed against and paid by such the employer and become due such employee as follows: a sum equivalent to the fixed amount of to the department EMPLOYEE in an amount equal to 5% NOT TO EXCEED 100% of the wages due and unpaid shall be assessed for each day, except Sundays and legal holidays, upon which such that the employer's failure to pay continues after the day upon which such wages were due, BUT NOT LESS THAN THE WAGES DUE PLUS INTEREST PAYMENT REQUIRED IN SUBSECTION (2). except that such However, the failure shall not be deemed is not considered to continue more than 20 days after the date such the wages were due.

(2) THE EMPLOYER SHALL ALSO PAY THE EMPLOYEE ANNUALIZED INTEREST ON THE UNPAID WAGES FROM THE DATE THE WAGES WERE DUE. THE INTEREST MUST BE CALCULATED BY THE DEPARTMENT AND COMPOUNDED ANNUALLY, BUT THE ANNUALIZED RATE MAY NOT EXCEED BE LESS THAN EXCEED BE LESS THAN 2 PERCENTAGE POINTS A YEAR ABOVE THE PRIME RATE OF MAJOR NEW YORK BANKS ON THE DATE OF SETTLEMENT.

(3) NOTHING IN THIS SECTION MAY BE CONSTRUED TO RELIEVE AN EMPLOYER FROM THE REQUIREMENT TO PAY AN EMPLOYEE THE FULL AMOUNT OF WAGES DUE, INCLUDING INTEREST, IF THE EMPLOYER IS FOUND IN VIOLATION OF THIS PART."

SECTION 2. SECTION 39-3-208, MCA, IS AMENDED TO READ:



1 **"39-3-208. Contracts in violation of part void.** Any
 2 contract or agreement made between any person, partnership,
 3 or corporation and any party in his or its employ the
 4 provisions of which violate, evade, or circumvent this part
 5 is unlawful and void, but such the employee may sue to
 6 recover his wages earned, together with the 5% penalty and
 7 interest specified in 39-3-206 or separately to recover the
 8 penalty and interest if the wages have been paid."

9 **Section 3.** Section 39-3-212, MCA, is amended to read:

10 **"39-3-212. Court enforcement of administrative**
 11 **decision.** A department default order, a decision of the
 12 hearings officer, if the decision is not appealed to the
 13 board, or a decision of the board, if judicial review is not
 14 sought, may be enforced by application by the commissioner
 15 to a district court for an order or judgment enforcing the
 16 decision. The commissioner shall apply to the district court
 17 where the employer has its principal place of business or in
 18 the first judicial district of the state. A proceeding under
 19 this section is not a review of the validity of the
 20 administrative decision."

21 **Section 4.** Section 39-3-216, MCA, is amended to read:

22 **"39-3-216. Hearing.** (1) If the department determines
 23 that a wage claim exists and the employer does not appeal
 24 the determination, the department may enter a default order
 25 against the employer for the amount of wages due and owing.

1 The department may enforce the default order pursuant to
 2 39-3-212.

3 ~~(1)~~(2) When the department determines that a wage claim
 4 exists and if it fails to settle the claim with the parties,
 5 it shall cause the matter to be brought to a hearing before
 6 a department hearings officer. The hearing must be conducted
 7 according to contested case procedures under Title 2,
 8 chapter 4, part 6, except that the hearings officer is not
 9 bound by statutory or common-law rules of evidence.

10 ~~(2)~~(3) The decision of the hearings officer is final
 11 unless further review is initiated pursuant to 39-3-217
 12 within 15 days after the decision is mailed to each party's
 13 last-known address. The period may be extended by the board
 14 for good cause."

15 **Section 5.** Section 39-3-604, MCA, is amended to read:

16 **"39-3-604. Bond to be filed -- bond requirements --**
 17 **payment -- exception.** (1) Except as provided in 39-3-605 and
 18 subsection (4) ~~of--this--section~~, a person operating a
 19 business as a restaurant, bar, or tavern is required to file
 20 a bond equal to at least double the amount of the projected
 21 semimonthly payroll with the commissioner. The bond ~~shall at~~
 22 ~~all--times~~ must be kept in full force and effect, and any
 23 cancellation or revocation of the bond or withdrawal of the
 24 sureties from the bond is grounds for enjoining the
 25 operation of business, as provided for in 39-3-607, until a

1 new bond of like tenure and effect is filed and approved.

2 (2) The bond required by subsection (1) of this section
3 must be filed with the commissioner. The state of Montana
4 must be named as the obligee, with good and sufficient
5 sureties to be approved by the attorney general.

6 (3) The bond must be conditioned to assure that the
7 employees who perform labor or other personal services are
8 guaranteed their wages in the event if the person ceases
9 operation of the business for any reason and is unable to
10 pay the wages due and owing the employees and to must assure
11 payment due the department as a result of payroll taxes.

12 (4) The bond must first be used to pay wages due and
13 owing employees, then to pay payroll taxes due the
14 department. The bond may not be used to pay an amount due
15 the state compensation mutual insurance fund established in
16 39-71-2313.

17 (4)(5) Except as provided in 39-3-605(2), this section
18 does not apply to any person who has operated the same
19 restaurant, bar, or tavern continuously since October 1,
20 1980."

21 **Section 6.** Section 39-3-605, MCA, is amended to read:

22 "39-3-605. Waiver of bond -- new or additional bond --
23 exemption. (1) After 3 years of compliance with this part,
24 the commissioner shall waive the provisions of 39-3-604 for
25 any person showing compliance with the applicable provisions

1 of the Fair Labor Standards Act and all the applicable laws
2 administered by the department.

3 (2) Notwithstanding 39-3-604(4)(5) and subsection (1)
4 of this section, the commissioner may require a person
5 operating a restaurant, bar, or tavern, including a person
6 who has been in business since October 1, 1980, or for over
7 3 years, to file a new bond or a bond of a greater amount
8 than double the semimonthly payroll whenever the person
9 operating a restaurant, bar, or tavern defaults on the
10 payment of wages, OR payroll taxes, or workers' compensation
11 premiums.

12 (3) A person who owns and operates a restaurant, bar,
13 or tavern is exempt from the provisions of 39-3-604 to the
14 extent that 39-3-604 would otherwise require filing of a
15 bond based on the payroll and wages attributable to members
16 of the immediate family of the person who owns and operates
17 the restaurant, bar, or tavern."

18 **NEW SECTION. Section 7. Effective date.** [This act] is
19 effective July 1, 1991.

20 **NEW SECTION. Section 8. Applicability.** [This act]
21 applies to all wage claims filed with the department of
22 labor and industry on or after July 1, 1991.

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