



1 HOUSE BILL NO. 726  
 2 INTRODUCED BY Bergquist  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY  
 4 Thomas James O'Keefe Blair Walter NATH  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES";  
 7 TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM  
 8 THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR  
 9 AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME  
 10 FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO  
 11 CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND  
 12 INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER  
 13 LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY  
 14 PAYMENT OF BENEFITS TO ALIENS; TO REVISE PAYMENT OF EXTENDED  
 15 BENEFITS; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS  
 16 THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO  
 17 REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO  
 18 PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS  
 19 WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE  
 20 FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN  
 21 OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST  
 22 BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND  
 23 BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR  
 24 LEAVING WORK WITHOUT GOOD CAUSE; TO DISQUALIFY AN INDIVIDUAL  
 25 FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK

1 DUE TO MISCONDUCT; TO REPEAL DISQUALIFICATION FOR BENEFITS  
 2 BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201,  
 3 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602,  
 4 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110,  
 5 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214,  
 6 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303,  
 7 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110,  
 8 39-51-2302, 39-51-2303, 39-51-2509, 39-51-2510, 39-51-2602,  
 9 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION  
 10 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

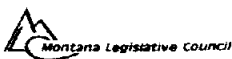
11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 39-51-201, MCA, is amended to read:

14 **"39-51-201. General definitions.** As used in this  
 15 chapter, unless the context clearly requires otherwise, the  
 16 following definitions apply:

17 (1) "Annual payroll" means the total amount of wages  
 18 paid by an employer, regardless of the time of payment, for  
 19 employment during a calendar year.

20 (2) "Base period" means the first four of the last five  
 21 completed calendar quarters immediately preceding the first  
 22 day of an individual's benefit year. However, in the case of  
 23 a combined-wage claim pursuant to the arrangement approved  
 24 by the secretary of labor of the United States, the base  
 25 period shall be that applicable under the unemployment law



1 of the paying state. For an individual who fails to meet the  
 2 qualifications of 39-51-2105 or a similar statute of another  
 3 state due to a temporary total disability as defined in  
 4 39-71-116 or a similar statute of another state or the  
 5 United States, the base period means the first four quarters  
 6 of the last five quarters preceding the disability if a  
 7 claim for unemployment benefits is filed within 24 months of  
 8 the date on which the individual's disability was incurred.

9 (3) "Benefits" means the money payments payable to an  
 10 individual, as provided in this chapter, with respect to the  
 11 individual's unemployment.

12 (4) "Benefit year", with respect to any individual,  
 13 means the 52-consecutive-week period beginning with the  
 14 first day of the calendar week in which such individual  
 15 files a valid claim for benefits, except that the benefit  
 16 year shall be 53 weeks if filing a new valid claim would  
 17 result in overlapping any quarter of the base year of a  
 18 previously filed new claim. A subsequent benefit year may  
 19 not be established until the expiration of the current  
 20 benefit year. However, in the case of a combined-wage claim  
 21 pursuant to the arrangement approved by the secretary of  
 22 labor of the United States, the base period is the period  
 23 applicable under the unemployment law of the paying state.

24 (5) "Board" means the board of labor appeals provided  
 25 for in Title 2, chapter 15, part 17.

1 (6) "Calendar quarter" means the period of 3  
 2 consecutive calendar months ending on March 31, June 30,  
 3 September 30, or December 31.

4 (7) "Contributions" means the money payments to the  
 5 state unemployment insurance fund required by this chapter  
 6 but does not include assessments under 39-51-404(4).

7 (8) "Department" means the department of labor and  
 8 industry provided for in Title 2, chapter 15, part 17.

9 (9) "Employing unit" means any individual or  
 10 organization, including the state government, any of its  
 11 political subdivisions or instrumentalities, any  
 12 partnership, association, trust, estate, joint-stock  
 13 company, insurance company, or corporation, whether domestic  
 14 or foreign, or the receiver, trustee in bankruptcy, trustee  
 15 or successor thereof, or the legal representative of a  
 16 deceased person which has or had in its employ one or more  
 17 individuals performing services for it within this state,  
 18 except as provided under ~~subsections--(8)--and--(9)--~~of  
 19 ~~39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals  
 20 performing services within this state for any employing unit  
 21 which maintains two or more separate establishments within  
 22 this state are considered to be employed by a single  
 23 employing unit for all the purposes of this chapter. Each  
 24 individual employed to perform or assist in performing the  
 25 work of any agent or employee of an employing unit is deemed

1 to be employed by such employing unit for the purposes of  
 2 this chapter, whether such individual was hired or paid  
 3 directly by such employing unit or by such agent or  
 4 employee, provided the employing unit has actual or  
 5 constructive knowledge of the work.

6 (10) "Employment office" means a free public employment  
 7 office or branch thereof operated by this state or  
 8 maintained as a part of a state-controlled system of public  
 9 employment offices or such other free public employment  
 10 offices operated and maintained by the United States  
 11 government or its instrumentalities as the department may  
 12 approve.

13 (11) "Fund" means the unemployment insurance fund  
 14 established by this chapter to which all contributions and  
 15 payments in lieu of contributions are required to be paid  
 16 and from which all benefits provided under this chapter  
 17 shall be paid.

18 (12) "Gross misconduct" means a criminal act, other than  
 19 a violation of a motor vehicle traffic law, for which an  
 20 individual has been convicted in a criminal court or has  
 21 admitted or conduct which demonstrates a flagrant and wanton  
 22 disregard of and for the rights or title or interest of a  
 23 fellow employee or the employer.

24 (13) "Hospital" means an institution which has been  
 25 licensed, certified, or approved by the state as a hospital.

1 (14) "Independent contractor" means an individual who  
 2 renders service in the course of an occupation and:

3 (a) has been and will continue to be free from control  
 4 or direction over the performance of the services, both  
 5 under his contract and in fact; and

6 (b) is engaged in an independently established trade,  
 7 occupation, profession, or business.

8 (15) (a) "Institution of higher education", for the  
 9 purposes of this part, means an educational institution  
 10 which:

11 (i) admits as regular students only individuals having  
 12 a certificate of graduation from a high school or the  
 13 recognized equivalent of such a certificate;

14 (ii) is legally authorized in this state to provide a  
 15 program of education beyond high school;

16 (iii) provides an educational program for which it  
 17 awards a bachelor's or higher degree or provides a program  
 18 which is acceptable for full credit toward such a degree, a  
 19 program of postgraduate or postdoctoral studies, or a  
 20 program of training to prepare students for gainful  
 21 employment in a recognized occupation; and

22 (iv) is a public or other nonprofit institution.

23 (b) Notwithstanding any of the foregoing provisions of  
 24 this subsection, all colleges and universities in this state  
 25 are institutions of higher education for purposes of this

1 part.

2 (16) "State" includes, in addition to the states of the  
3 United States of America, the District of Columbia, Puerto  
4 Rico, the Virgin Islands, and the Dominion of Canada.

5 (17) "Taxes" means contributions and assessments  
6 required under this chapter but does not include penalties  
7 or interest for past-due or unpaid contributions or  
8 assessments.

9 ~~(17)~~(18) "Unemployment insurance administration fund"  
10 means the unemployment insurance administration fund  
11 established by this chapter from which administrative  
12 expenses under this chapter shall be paid.

13 ~~(18)~~(19) (a) "Wages" means all remuneration payable for  
14 personal services, including commissions and bonuses, the  
15 cash value of all remuneration payable in any medium other  
16 than cash, and backpay received pursuant to a dispute  
17 related to employment. The reasonable cash value of  
18 remuneration payable in any medium other than cash shall be  
19 estimated and determined in accordance with rules prescribed  
20 by the department.

21 (b) The term "wages" does not include:

22 (i) the amount of any payment made by the employer, if  
23 the payment was made under a plan established for the  
24 employees in general or for a specific class or classes of  
25 employees, to or on behalf of the employee for:

1 (A) retirement;

2 (B) sickness or accident disability, ~~but in the case of~~  
3 ~~payments made by an employer directly to an employee, only~~  
4 ~~those payments made under a workers' compensation law are~~  
5 ~~excluded from "wages";~~

6 (C) medical and hospitalization expenses in connection  
7 with sickness or accident disability; or

8 (D) death;

9 (ii) remuneration paid by any county welfare office from  
10 public assistance funds for services performed at the  
11 direction and request of such county welfare office.

12 ~~(19)~~(20) "Week" means a period of 7 consecutive calendar  
13 days ending at midnight on Saturday.

14 ~~(20)~~(21) An individual's "weekly benefit amount" means  
15 the amount of benefits the individual would be entitled to  
16 receive for 1 week of total unemployment."

17 **Section 2.** Section 39-51-202, MCA, is amended to read:

18 "39-51-202. Employer defined. "Employer" means:

19 (1) any employing unit whose total annual payroll  
20 within either the current or preceding calendar year equals  
21 or exceeds the sum of \$1,000;

22 (2) any agricultural employing unit that pays \$20,000  
23 or more in cash to workers for agricultural labor in any  
24 quarter in the current or preceding calendar year or employs  
25 10 or more workers in agricultural labor on 20 days in 20

1 different weeks during the current or preceding calendar  
 2 year;

3 (3) any domestic employing unit that pays \$1,000 or  
 4 more in cash for domestic service in any quarter during the  
 5 current or preceding calendar year;

6 (2)(4) any individual or employing unit which acquired  
 7 the organization, trade, or business or substantially all of  
 8 the assets thereof of another which at the time of such  
 9 acquisition was an employer subject to this chapter;

10 (3)(5) any individual or employing unit which acquired  
 11 the organization, trade, or business or substantially all  
 12 the assets thereof of another employing unit not an employer  
 13 subject to this chapter and which, if subsequent to such  
 14 acquisition it were treated as a single unit with such other  
 15 employing unit, would be an employer under subsection (1) of  
 16 this section;

17 (4)(6) any employing unit not an employer by reason of  
 18 any other subsection of this section for which, within  
 19 either the current or preceding calendar year, service is or  
 20 was performed with respect to which such employing unit is  
 21 liable for any federal tax against which credit may be taken  
 22 for contributions paid into a state unemployment fund or an  
 23 employing unit which, as a condition for approval of this  
 24 chapter for full tax credit against the tax imposed by the  
 25 Federal Unemployment Tax Act, is required pursuant to such

1 act to be an employer under this chapter;

2 (5)(7) any employing unit which, having become an  
 3 employer under subsection (1), (2)(7)-(3)(4), (5), or (4)(6)  
 4 has not, under 39-51-1101, ceased to be an employer subject  
 5 to this chapter; or

6 (6)(8) for the effective period of its election  
 7 pursuant to 39-51-1102, any other employing unit which has  
 8 elected to become fully subject to this chapter."

9 **Section 3.** Section 39-51-203, MCA, is amended to read:

10 "39-51-203. **Employment defined.** (1) "Employment",  
 11 subject to other provisions of this section, means service  
 12 by an individual or by an officer of a corporation,  
 13 including service in interstate commerce, performed for  
 14 wages or under any contract of hire, written or oral,  
 15 express or implied.

16 (2) (a) The term "employment" includes an individual's  
 17 entire service performed within or both within and without  
 18 this state if:

19 (i) the service is localized in this state; or

20 (ii) the service is not localized in any state but some  
 21 of the service is performed in this state and:

22 (A) the base of operations or, if there is no base of  
 23 operations, then the place from which such service is  
 24 directed or controlled, is in this state; or

25 (B) the base of operations or place from which such

1 service is directed or controlled is not in any state in  
2 which some part of the service is performed, but the  
3 individual's residence is in this state.

4 (b) Service is considered to be localized within a  
5 state if:

6 (i) the service is performed entirely within such  
7 state; or

8 (ii) the service is performed both within and without  
9 such state, but the service performed without such state is  
10 incidental to the individual's service within the state, for  
11 example, is temporary or transitory in nature or consists of  
12 isolated transactions.

13 (3) Service not covered under subsection (2) of this  
14 section and performed entirely without this state with  
15 respect to no part of which contributions are required and  
16 paid under an unemployment insurance law of any other state  
17 or of the federal government is considered to be employment  
18 subject to this chapter if the individual performing such  
19 services is a resident of this state and the department  
20 approves the election of the employing unit for whom such  
21 services are performed that the entire service of such  
22 individual is considered to be employment subject to this  
23 chapter.

24 (4) Service performed by an individual for wages is  
25 considered to be employment subject to this chapter unless

1 and until it is shown to the satisfaction of the department  
2 that the individual is an independent contractor.

3 (5) The term "employment" includes service performed by  
4 an individual in the employ of this state or any of its  
5 instrumentalities (or in the employ of this state and one or  
6 more other states or their instrumentalities) for a hospital  
7 or institution of higher education located in this state.  
8 The term "employment" includes service performed by all  
9 individuals, including without limitations those individuals  
10 who work for the state of Montana, its universities, any of  
11 its colleges, public schools, components or units thereof,  
12 or any local government unit and one or more other states or  
13 their instrumentalities or political subdivisions whose  
14 services are compensated by salary or wages.

15 (6) The term "employment" includes service performed by  
16 an individual in the employ of a religious, charitable,  
17 scientific, literary, or educational organization.

18 (7) (a) The term "employment" includes the service of  
19 an individual who is a citizen of the United States  
20 performed outside the United States, except in Canada, in  
21 the employ of an American employer, other than service which  
22 is considered employment under the provisions of subsection  
23 (2) of this section or the parallel provisions of another  
24 state's law, if:

25 (i) the employer's principal place of business in the

1 United States is located in this state;

2 (ii) the employer has no place of business in the United  
3 States, but:

4 (A) the employer is an individual who is a resident of  
5 this state;

6 (B) the employer is a corporation which is organized  
7 under the laws of this state; or

8 (C) the employer is a partnership or a trust and the  
9 number of the partners or trustees who are residents of this  
10 state is greater than the number who are residents of any  
11 other state; or

12 (iii) none of the criteria of sections (7)(a)(i) and  
13 (7)(a)(ii) of this subsection are met but the employer has  
14 elected coverage in this state or, the employer having  
15 failed to elect coverage in any state, the individual has  
16 filed a claim for benefits based on such service under the  
17 law of this state.

18 (b) An "American employer", for purposes of this  
19 subsection, means a person who is:

20 (i) an individual who is a resident of the United  
21 States;

22 (ii) a partnership if two-thirds or more of the partners  
23 are residents of the United States;

24 (iii) a trust if all of the trustees are residents of  
25 the United States; or

1 (iv) a corporation organized under the laws of the  
2 United States or of any state.

3 ~~(8) Agricultural labor exempted under 39-51-204 is~~  
4 ~~considered employment whenever the employing unit pays~~  
5 ~~\$20,000 or more in cash to workers for agricultural labor in~~  
6 ~~any quarter in the current or preceding calendar year or~~  
7 ~~employs 10 or more workers in agricultural labor on 20 days~~  
8 ~~in 20 different weeks during the current or preceding~~  
9 ~~calendar year. If an employer, including but not limited to~~  
10 ~~an employing unit providing outfitter and guide services, is~~  
11 ~~otherwise subject to this chapter and has agricultural~~  
12 ~~employment, all employees engaged in agricultural labor must~~  
13 ~~be excluded from coverage under this chapter if the~~  
14 ~~employer:~~

15 ~~(a) in any quarter or calendar year, as applicable,~~  
16 ~~does not meet either of the tests relating to the monetary~~  
17 ~~amount or number of employees and days worked, for the~~  
18 ~~subject wages attributable to agricultural labor; and~~

19 ~~(b) keeps separate books and records to account for the~~  
20 ~~employment of persons in agricultural labor;~~

21 ~~(9) Domestic service exempted under 39-51-204(1)(b) is~~  
22 ~~considered employment whenever the employing unit pays~~  
23 ~~\$1,000 or more in cash for domestic service in any quarter~~  
24 ~~during the current or preceding calendar year. If an~~  
25 ~~employer is otherwise subject to this chapter and has~~



1 domestic---service---employment,---all---employees---engaged---in  
2 domestic-service-must-be-excluded-from-coverage---under---this  
3 chapter-if-the-employer:

4 (a)---does---not---meet---the---monetary---payment-test-in-any  
5 quarter-or-calendar-year,---as---applicable,---for---the---subject  
6 wages-attributable-to-domestic-service;---and

7 (b)---keeps-separate-books-and-records-to-account-for-the  
8 employment-of-persons-in-domestic-service."

9 **Section 4.** Section 39-51-204, MCA, is amended to read:

10 "39-51-204. Exclusions from definition of employment.

11 (1) The term "employment" does not include:

12 (a) agricultural labor, except as provided in  
13 39-51-203(8); 39-51-202(2). If an employer is otherwise  
14 subject to this chapter and has agricultural employment, all  
15 employees engaged in agricultural labor must be excluded  
16 from coverage under this chapter if the employer:

17 (i) in any quarter or calendar year, as applicable,  
18 does not meet either of the tests relating to the monetary  
19 amount or number of employees and days worked, for the  
20 subject wages attributable to agricultural labor; and

21 (ii) keeps separate books and records to account for the  
22 employment of persons in agricultural labor;

23 (b) domestic service in a private home, local college  
24 club, or local chapter of a college fraternity or sorority,  
25 except as provided in 39-51-203(9); 39-51-202(3). If an

1 employer is otherwise subject to this chapter and has  
2 domestic service employment, all employees engaged in  
3 domestic service must be excluded from coverage under this  
4 chapter if the employer:

5 (i) does not meet the monetary payment test in any  
6 quarter or calendar year, as applicable, for the subject  
7 wages attributable to domestic service; and

8 (ii) keeps separate books and records to account for the  
9 employment of persons in domestic service;

10 (c) service performed as an officer or member of the  
11 crew of a vessel on the navigable waters of the United  
12 States;

13 (d) service performed by an individual in the employ of  
14 that individual's son, daughter, or spouse and service  
15 performed by a child under the age of 21 in the employ of  
16 the child's father or mother;

17 (e) service performed in the employ of any other state  
18 or its political subdivisions or of the United States  
19 government or of an instrumentality of any other state or  
20 states or their political subdivisions or of the United  
21 States, except that national banks organized under the  
22 national banking law shall not be entitled to exemption  
23 under this subsection and shall be subject to this chapter  
24 the same as state banks, provided that such service is  
25 excluded from employment as defined in the Federal

1 Unemployment Tax Act by section 3306(c)(7) of that act;

2 (f) service with respect to which unemployment  
3 insurance is payable under an unemployment insurance system  
4 established by an act of congress, provided that the  
5 department must enter into agreements with the proper  
6 agencies under such act of congress, which agreements shall  
7 become effective in the manner prescribed in the Montana  
8 Administrative Procedure Act for the adoption of rules, to  
9 provide reciprocal treatment to individuals who have, after  
10 acquiring potential rights to benefits under this chapter,  
11 acquired rights to unemployment insurance under such act of  
12 congress or who have, after acquiring potential rights to  
13 unemployment insurance under such act of congress, acquired  
14 rights to benefits under this chapter;

15 (g) services performed in the delivery and distribution  
16 of newspapers or shopping news from house to house and  
17 business establishments by an individual under the age of 18  
18 years, but not including the delivery or distribution to any  
19 point or points for subsequent delivery or distribution;

20 (h) services performed by real estate, securities, and  
21 insurance salespeople paid solely by commissions and without  
22 guarantee of minimum earnings;

23 (i) service performed in the employ of a school,  
24 college, or university if such service is performed by a  
25 student who is enrolled and is regularly attending classes

1 at such school, college, or university or by the spouse of  
2 such a student if such spouse is advised, at the time such  
3 spouse commences to perform such service, that the  
4 employment of such spouse to perform such service is  
5 provided under a program to provide financial assistance to  
6 such student by such school, college, or university and such  
7 employment will not be covered by any program of  
8 unemployment insurance;

9 (j) service performed by an individual who is enrolled  
10 at a nonprofit or public educational institution, which  
11 normally maintains a regular faculty and curriculum and  
12 normally has a regularly organized body of students in  
13 attendance at the place where its educational activities are  
14 carried on, as a student in a full-time program taken for  
15 credit at such institution which combines academic  
16 instruction with work experience if such service is an  
17 integral part of such program and such institution has so  
18 certified to the employer, except that this subsection shall  
19 not apply to service performed in a program established for  
20 or on behalf of an employer or group of employers;

21 (k) service performed in the employ of a hospital if  
22 such service is performed by a patient of the hospital;

23 (l) services performed by a cosmetologist who is  
24 licensed under Title 37, chapter 31, or a barber who is  
25 licensed under Title 37, chapter 30, and who has

1 acknowledged in writing that he is not covered by  
 2 unemployment insurance and workers' compensation and who  
 3 contracts with a cosmetological establishment as defined in  
 4 37-31-101 or a barbershop as defined in 37-30-101, which  
 5 contract shall show the cosmetologist or barber is free from  
 6 all control and direction of the owner in the contract and  
 7 in fact; receives payment for services from his or her  
 8 individual clientele; leases, rents, or furnishes all of his  
 9 or her own equipment, skills, or knowledge; and whose  
 10 contract gives rise to an action for breach of contract in  
 11 the event of contract termination (the existence of a single  
 12 license for the cosmetological establishment or barbershop  
 13 shall not be construed as a lack of freedom from control or  
 14 direction under this subsection);

15 (m) casual labor not in the course of an employer's  
 16 trade or business performed in any calendar quarter, unless  
 17 the cash remuneration paid for such service is \$50 or more  
 18 and such service is performed by an individual who is  
 19 regularly employed by such employer to perform such service.  
 20 "Regularly employed" means the services are performed during  
 21 at least 24 days in the same quarter.

22 (n) services performed for the installation of floor  
 23 coverings if the installer:

24 (i) bids or negotiates a contract price based upon work  
 25 performed by the yard or by the job;

1 (ii) is paid upon completion of an agreed upon portion  
 2 of the job or after the job is completed;

3 (iii) may perform services for anyone without  
 4 limitation;

5 (iv) may accept or reject any job;

6 (v) furnishes substantially all tools and equipment  
 7 necessary to provide the services; and

8 (vi) works under a written contract that:

9 (A) gives rise to a breach of contract action if the  
 10 installer or any other party fails to perform the contract  
 11 obligations;

12 (B) states the installer is not covered by unemployment  
 13 insurance; and

14 (C) requires the installer to provide a current  
 15 workers' compensation policy or to obtain an exemption from  
 16 workers' compensation requirements.

17 (2) "Employment" does not include elected public  
 18 officials.

19 (3) For the purposes of 39-51-203(6), the term  
 20 "employment" does not apply to service performed:

21 (a) in the employ of a church or convention or  
 22 association of churches or an organization which is operated  
 23 primarily for religious purposes and which is operated,  
 24 supervised, controlled, or principally supported by a church  
 25 or convention or association of churches;

1 (b) by a duly ordained, commissioned, or licensed  
2 minister of a church in the exercise of the church's  
3 ministry or by a member of a religious order in the exercise  
4 of duties required by such order;

5 (c) in a facility conducted for the purpose of carrying  
6 out a program of rehabilitation for individuals whose  
7 earning capacity is impaired by age or physical or mental  
8 deficiency or injury or providing remunerative work for  
9 individuals who, because of their impaired physical or  
10 mental capacity, cannot be readily absorbed in the  
11 competitive labor market by an individual receiving such  
12 rehabilitation or remunerative work;

13 (d) as part of an unemployment work-relief or  
14 work-training program assisted or financed in whole or in  
15 part by a federal agency or any agency of a state or  
16 political subdivision thereof by an individual receiving  
17 such work relief or work training; or

18 (e) for a state prison or other state correctional or  
19 custodial institution by an inmate of that institution."

20 **Section 5.** Section 39-51-206, MCA, is amended to read:

21 "39-51-206. Agricultural labor -- who treated as  
22 employer of member of a crew furnished by a crew leader. (1)  
23 For the purposes of 39-51-203, any individual who is a  
24 member of a crew furnished by a crew leader to perform  
25 service in agricultural labor for any other person shall be

1 treated as an employee of such crew leader if:

2 (a) such crew leader holds a valid certificate of  
3 registration under the Migrant and Seasonal Agricultural  
4 Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);  
5 or

6 (b) (i) substantially all the members of such crew  
7 operate or maintain tractors, mechanized harvesting or  
8 cropdusting equipment, or any other mechanized equipment  
9 which is provided by such crew leader; and

10 (ii) such individual is not an employee of such other  
11 person ~~within the meaning of 39-51-202(1) or 39-51-203(8) or~~  
12 39-51-203(9) for whom services in agricultural labor are  
13 performed.

14 (2) In the case of any individual who is furnished by a  
15 crew leader to perform service in agricultural labor for any  
16 other person and who is not treated as an employee of such  
17 crew leader under subsection (1):

18 (a) such other person and not the crew leader shall be  
19 treated as the employer of such individual; and

20 (b) such other person shall be treated as having paid  
21 cash remuneration to such individual in an amount equal to  
22 the amount of cash remuneration paid to such individual by  
23 the crew leader, either on his own behalf or on behalf of  
24 such other person, for the service in agricultural labor  
25 performed for such other person.

1 (3) The term "crew leader" means an individual who:  
 2 (a) furnishes individuals to perform service in  
 3 agricultural labor for any other person;  
 4 (b) pays, either on his own behalf or on behalf of such  
 5 other person, the individuals so furnished by him for the  
 6 service in agricultural labor performed by them; and  
 7 (c) has not entered into a written agreement with such  
 8 other person under which such individual is designated as an  
 9 employee of such other person."

10 **Section 6.** Section 39-51-602, MCA, is amended to read:

11 "39-51-602. Method to be used by department in keeping  
 12 wage records. Wage records kept by the department for the  
 13 purposes of this chapter shall must be kept on the basis of  
 14 wages paid, except that for the purposes of determining  
 15 benefit eligibility and the amount and duration of benefits  
 16 payable, wages, including lump-sum payments of accrued  
 17 wages, must be assigned to periods of time as determined in  
 18 accordance with rules adopted by the department."

19 **Section 7.** Section 39-51-603, MCA, is amended to read:

20 "39-51-603. Employing unit to keep records and make  
 21 reports. (1) Each employing unit shall keep true and  
 22 accurate work records containing such information as the  
 23 department may prescribe. Those records shall be open to  
 24 inspection and audit and shall be subject to being copied by  
 25 the department or its authorized representative at any

1 reasonable time and as often as may be necessary.

2 (2) The department and the chairman of any appeal  
 3 tribunal may require from any employing unit any sworn or  
 4 unsworn reports with respect to persons employed by it which  
 5 the department considers necessary to the effective  
 6 administration of this chapter.

7 (3) Information thus obtained or obtained from any  
 8 individual under this chapter shall, except to the  
 9 individual claimant to the extent necessary for the proper  
 10 presentation of a claim, be held confidential and shall not  
 11 be published or be open to public inspection, except to  
 12 public employees in the performance of their public duties,  
 13 in any manner revealing the individual's or employing unit's  
 14 identity, but any claimant or his legal representative at a  
 15 hearing before the board or appeal tribunal shall be  
 16 supplied with information from the records to the extent  
 17 necessary for the proper presentation of his claim.

18 (4) Any employee or member of the department who  
 19 violates any provision of this section shall be fined not  
 20 less than \$20 or more than \$200 or imprisoned for not longer  
 21 than 90 days or both."

22 **Section 8.** Section 39-51-1101, MCA, is amended to read:

23 "39-51-1101. Commencement and termination of coverage  
 24 under chapter. (1) Any employing unit which is or becomes an  
 25 employer subject to this chapter within any calendar year

1 shall be subject to this chapter during the whole of such  
2 calendar year, except that this subsection shall not apply  
3 to an employing unit electing coverage as provided for in  
4 39-51-1102.

5 (2) Except as otherwise provided in 39-51-1102, an  
6 employing unit shall cease to be an employer subject to this  
7 chapter only as of January 1 of any calendar year only if it  
8 files with the department prior to the last day of February  
9 of such year a written application for termination of  
10 coverage and the department finds that the total wages  
11 payable for employment by said employer in the preceding  
12 calendar year did not equal or exceed \$1,000 the amount of  
13 wages required under 39-51-202 to be considered an employer  
14 subject to this chapter. For the purpose of this subsection,  
15 the two or more employing units mentioned in ~~subsection--(2)~~  
16 ~~or--(3)--of 39-51-202(4) or (5)~~ shall be treated as a single  
17 employing unit."

18 **Section 9.** Section 39-51-1104, MCA, is amended to read:

19 "39-51-1104. Duty and liability of contractor and  
20 subcontractor, respectively, in regard to contributions  
21 taxes, penalties, and interest owed by subcontractor. (1)  
22 Any contractor who is or becomes an employer under the  
23 provisions of this chapter who contracts with any  
24 subcontractor who also is or becomes an employer under the  
25 provisions of this chapter shall withhold sufficient money

1 on the contract to guarantee that all contributions taxes,  
2 penalties, and interest are paid upon completion of the  
3 contract.

4 (2) It shall be the duty of any subcontractor who is or  
5 becomes an employer under the provisions of this chapter to  
6 furnish the contractor with a certification issued by the  
7 department, prior to final payment for the particular job,  
8 stating that said subcontractor is current and in full  
9 compliance with the provisions of this chapter.

10 (3) Failure to comply with the provisions of this  
11 section shall render the contractor directly liable for all  
12 contributions taxes, penalties, and interest due from the  
13 subcontractor on the particular job, and the administrator  
14 has all of the remedies of collection against the contractor  
15 under the provisions of this chapter as though the services  
16 in question were performed directly for the contractor."

17 **Section 10.** Section 39-51-1105, MCA, is amended to  
18 read:

19 "39-51-1105. Liability of corporate officers for  
20 contributions taxes, penalties, and interest owed by  
21 corporation. When a corporation subject to Montana corporate  
22 law has failed to file the annual corporation report with  
23 the Montana secretary of state as required by law the  
24 department shall hold the president, vice-president,  
25 secretary, and treasurer jointly and severally liable for

1 any contributions taxes, penalties, and interest due for the  
 2 period in which the corporation is delinquent in filing the  
 3 annual corporation report. If the required annual  
 4 corporation report is made and filed after the time  
 5 specified, such officers may not, on account of prior  
 6 failure to make report, be held liable for the contributions  
 7 taxes thereafter accruing."

8 **Section 11.** Section 39-51-1110, MCA, is amended to  
 9 read:

10 **"39-51-1110. Refunds to employers.** (1) If not later  
 11 than 3 years after the date on which any contributions taxes  
 12 or interest thereon became due or not later than 1 year from  
 13 the date on which payment was made, whichever is later, an  
 14 employer who has paid such contributions taxes or interest  
 15 thereon shall make application for an adjustment thereof in  
 16 connection with subsequent contribution tax payments or for  
 17 a refund thereof because such adjustment cannot be made and  
 18 the department shall determine that such contributions taxes  
 19 or interest or any portion thereof was erroneously  
 20 collected, the department shall allow such employer to make  
 21 an adjustment thereof, without interest, in connection with  
 22 subsequent contribution tax payments by him or, if such  
 23 adjustment cannot be made, the department shall refund said  
 24 amount, without interest, from the fund. For like cause and  
 25 within the same period, adjustment or refund may be so made

1 on the department's own initiative.

2 (2) If the department shall determine that an employer  
 3 has paid contributions taxes to this state under this  
 4 chapter when such contributions taxes should have been paid  
 5 to another state under a similar act of such other state,  
 6 transfer of such contributions taxes to such other state  
 7 shall be made upon discovery or, upon proof of payment that  
 8 such other state has been fully paid, then refund to such  
 9 employer shall be made at any time upon application without  
 10 limitation of time.

11 (3) In the event that this chapter is not certified by  
 12 the secretary of labor under section 1603 of the Internal  
 13 Revenue Code, as amended, 1939, for any year, then and in  
 14 that event refunds shall be made of all contributions taxes  
 15 required under this chapter from employers for that year."

16 **Section 12.** Section 39-51-1301, MCA is amended to read:

17 **"39-51-1301. (Effective July 1, 1991) Penalty and**  
 18 **interest on past-due contributions taxes.** (1) Contributions  
 19 Taxes unpaid on the date on which they are due and payable,  
 20 as provided by subsections (1) and (2) of 39-51-1103 and  
 21 39-51-1125, that are paid by the end of the month following  
 22 the due date shall be subject to a penalty assessment of \$10  
 23 or 10% of the contribution tax due, whichever is greater. If  
 24 the contributions taxes are not paid by the end of the month  
 25 following the due date, the employer shall be subject to a

1 penalty assessment of \$15 or 15% of the contributions taxes  
 2 due, whichever is greater. All past-due contributions taxes  
 3 shall bear interest at the rate of 18% a year, to be  
 4 prorated on a daily basis.

5 (2) A penalty of \$40 shall be assessed whenever, as the  
 6 result of a willful refusal of an employer to furnish wage  
 7 information or pay contributions taxes on time, the  
 8 department issues a subpoena to obtain wage information or  
 9 makes a summary or jeopardy assessment pursuant to  
 10 39-51-1302.

11 (3) Interest and penalties collected pursuant to this  
 12 section shall be paid into the unemployment insurance trust  
 13 fund.

14 (4) When failure to pay contributions taxes on time was  
 15 not caused by willful intent of the employer, the department  
 16 may abate the penalty and interest.

17 (5) All money accruing to the unemployment insurance  
 18 trust fund from interest and penalties collected on past-due  
 19 contributions taxes must be used solely for the payment of  
 20 unemployment insurance benefits and may not be used for any  
 21 other purpose."

22 **Section 13.** Section 39-51-1302, MCA, is amended to  
 23 read:

24 "39-51-1302. Summary or jeopardy assessment of unpaid  
 25 contributions taxes. (1) If any employer fails to file a

1 report or return as required under this chapter or the  
 2 regulations of the department adopted thereunder within the  
 3 time specified or if the employer's records are inaccurate  
 4 or are incomplete when an employer has already filed a  
 5 quarterly wage report for the period in question, the  
 6 department may make a summary or jeopardy assessment of the  
 7 amount due by making up such report and determining the  
 8 amount of contributions taxes due and owing to the fund upon  
 9 the basis of such information as the department may be able  
 10 to obtain, and thereupon the same shall be collected the  
 11 same as other reports and contributions taxes due, with  
 12 penalty and interest as provided in this chapter.

13 (2) Upon making such summary or jeopardy assessment,  
 14 the department shall immediately notify the employer in  
 15 writing by personal service or by certified ~~or~~-registered  
 16 mail in the usual course at the last known principal place  
 17 of business operated by the employer. Such assessment shall  
 18 be final unless the employer shall protest such assessment  
 19 in writing within 15 days after service of the notice or,  
 20 within the same period of time, the employer shall file a  
 21 correct, signed, and sworn report and statement as provided  
 22 by the chapter and the regulations of the department.

23 (3) Upon written protest being filed as above set  
 24 forth, a day certain for the hearing thereof shall be fixed  
 25 by the department and notice thereof mailed to the employer.



1 At such hearing, the facts ascertained by the department  
2 shall be conclusive and the department may upon the basis of  
3 such facts ascertained assess the amount due, modify, set  
4 aside, or revise the prior assessment and require the  
5 employer to pay the amount due with penalty and interest as  
6 provided for in this chapter. A copy of the decision of the  
7 department and the assessment of the amount due shall be  
8 mailed to the employer at his last known principal place of  
9 business and thereupon become final."

10 **Section 14.** Section 39-51-1303, MCA, is amended to  
11 read:

12 "**39-51-1303.** Collection of unpaid contributions taxes  
13 by civil action. (1) If, after due notice, any employer  
14 defaults in any payment of contributions taxes, penalties,  
15 or interest thereon, the department may at its discretion  
16 initiate a civil action in the name of the Montana  
17 department of labor and industry to collect the amount due,  
18 and the employer adjudged in default shall pay the costs of  
19 such action.

20 (2) An action for the collection of contributions taxes  
21 due must be brought within 5 years after the due date of  
22 such contributions taxes or it is barred.

23 (3) The department may pursue its remedy under either  
24 this section or 39-51-1304, or both."

25 **Section 15.** Section 39-51-1304, MCA, is amended to

1 read:

2 "**39-51-1304.** Lien for payment of unpaid contributions  
3 ~~and--assessments~~ taxes -- levy and execution. (1) Unpaid  
4 ~~contributions--and--assessments--under--39-51-404(4)~~ taxes,  
5 including penalties and interest assessed thereon, have the  
6 effect of a judgment against the employer, arising at the  
7 time such payments are due. The department may issue a  
8 certificate setting forth the amount of payments due and  
9 directing the clerk of the district court of any county of  
10 the state to enter the certificate as a judgment in the  
11 docket pursuant to 25-9-301. From the time the judgment is  
12 docketed, it becomes a lien upon all real and personal  
13 property of the employer. ~~From--the--time--the--judgment--is~~  
14 ~~filed-with-the-secretary-of-state-or-a-registrar-of-personal~~  
15 ~~property--specifically--describing-the-personal-property--it~~  
16 ~~becomes-a-lien-upon-personal-property-of-the-employer.~~ After  
17 the due process requirements of 39-51-1109 and 39-51-2403  
18 have been satisfied, the department may enforce the judgment  
19 pursuant to Title 25, chapter 13, except that the department  
20 may enforce the judgment at any time within 10 years of the  
21 creation of the lien.

22 (2) The lien provided for in subsection (1) is not  
23 valid against any third party owning an interest in real or  
24 personal property against which the judgment is enforced if:

25 (a) the third party's interest is recorded prior to the

1 entrance of the certificate as a judgment; and

2 (b) the third party receives from the most recent  
3 grantor of the interest a signed affidavit stating that all  
4 ~~contributions~~assessments taxes, penalties, and interest  
5 due from the grantor have been paid.

6 (3) A grantor who signs and delivers an affidavit is  
7 subject to the penalties imposed by 39-51-3204 if any part  
8 of it is untrue. Notwithstanding the provisions of  
9 39-51-3204, the department may proceed against the employer  
10 under this section or 39-51-1303, or both, to collect the  
11 delinquent ~~contributions~~assessments taxes, penalties, and  
12 interest.

13 (4) The lien provided for in subsection (1) must be  
14 released upon payment in full of the unpaid taxes,  
15 penalties, and accumulated interest. The department may  
16 release or may partially release the lien upon partial  
17 payment or whenever the department determines that the  
18 release or partial release of the lien will facilitate the  
19 collection of unpaid taxes, penalties, or interest. The  
20 department may release the lien if it determines that the  
21 lien is unenforceable."

22 **Section 16.** Section 39-51-1305, is amended to read:

23 "39-51-1305. Priority of payment of contributions taxes  
24 due under legal dissolutions or distributions. In the event  
25 of any distribution of an employer's assets pursuant to an

1 order of any court under the laws of this state, including  
2 any receivership, assignment for benefit of creditors,  
3 adjudicated insolvency, composition, or similar proceeding,  
4 contributions taxes then or thereafter due shall be paid in  
5 full prior to all other claims, except taxes and claims for  
6 wages of not more than \$250 to each claimant earned within 6  
7 months of the commencement of the proceeding."

8 **Section 17.** Section 39-51-1306, MCA, is amended to  
9 read:

10 "39-51-1306. Reciprocity with other states for  
11 collection of unpaid contributions taxes. (1) The courts of  
12 this state shall recognize and enforce liabilities for  
13 unemployment contributions taxes and any other special  
14 assessments imposed by other states which extend a like  
15 comity to this state.

16 (2) The department is hereby empowered to sue in the  
17 courts of any other jurisdiction which extends such comity  
18 to collect unemployment contributions taxes, penalties, and  
19 interest due this state. The officials of other states which  
20 by statute or otherwise extend a like comity to this state  
21 may sue in the courts of this state to collect for such  
22 contributions taxes and any other special assessments and  
23 interest and penalties, if any, due such state. In any such  
24 case the administrator may through his attorney or attorneys  
25 institute and conduct such suit for such other state.

1 (3) Venue of such proceedings shall be the same as for  
2 actions to collect delinquent contributions taxes,  
3 penalties, and interest due under this chapter.

4 (4) A certificate by the secretary of any such state  
5 under the great seal of such state attesting the authority  
6 of such official or officials to collect unemployment  
7 insurance contributions taxes and other special assessments,  
8 penalties, and interest shall be conclusive evidence of such  
9 authority."

10 **Section 18.** Section 39-51-2110, MCA, is amended to  
11 read:

12 "~~39-51-2110. Payment of benefits to aliens. (1)~~  
13 ~~Effective-January-17-1970,-benefits~~ Benefits shall not be  
14 ~~paid payable~~ on the basis of services performed by an alien  
15 unless ~~such the~~ the alien is an individual who ~~has--been~~ was  
16 lawfully admitted for permanent residence at the time the  
17 services were performed, was lawfully present for the  
18 purposes of performing the services, or otherwise--is was  
19 permanently residing in the United States under color of  
20 law, at the time the services were performed, including an  
21 alien who ~~is was~~ was lawfully present in the United States as a  
22 result of the application of the provisions of section  
23 203(a)(7) or section 212(d)(5) of the Immigration and  
24 Nationality Act.

25 (2) Any data or information required of individuals

1 applying for benefits to determine whether benefits are not  
2 payable to them because of their alien status shall be  
3 uniformly required from all applicants for benefits.

4 (3) In the case of an individual whose application for  
5 benefits would otherwise be approved, no determination that  
6 benefits to such individual are not payable because of his  
7 alien status shall be made except upon a preponderance of  
8 the evidence."

9 **Section 19.** Section 39-51-2509, MCA, is amended to  
10 read:

11 "~~39-51-2509. Weekly extended benefit amount. (1)~~ The  
12 weekly extended benefit amount payable to an individual for  
13 a week of total unemployment in his eligibility period shall  
14 be an amount equal to the weekly benefit amount, except as  
15 provided in subsection (2).

16 (2) For any week during a period in which federal  
17 payments to this state under section 204 of the  
18 Federal-State Extended Unemployment Compensation Act of 1970  
19 are reduced under an order issued under section 252 of the  
20 Balanced Budget and Emergency Deficit Control Act of 1985,  
21 the weekly extended benefit amount payable to an individual  
22 for a week of total unemployment in his eligibility period  
23 must be reduced by a percentage equivalent to the percentage  
24 of the reduction in the federal payment. The reduced weekly  
25 extended benefit amount, if not a full dollar amount, must

1 be rounded to the nearest lower full dollar amount, payable  
2 to him during his applicable benefit year."

3 **Section 20.** Section 39-51-2510, MCA, is amended to  
4 read:

5 **"39-51-2510.** Total extended benefit amount. The (1)  
6 Except as provided in subsection (2), the total extended  
7 benefit amount payable to any eligible individual with  
8 respect to his applicable benefit year shall be the least of  
9 the following amounts:

10 ††(a) 50% of the total amount of regular benefits  
11 which were payable to him under this chapter in his  
12 applicable benefit year;

13 ††(b) 13 times his weekly benefit amount which was  
14 payable to him under this chapter for a week of total  
15 unemployment in the applicable benefit year.

16 (2) During any fiscal year in which federal payments to  
17 this state under section 204 of the Federal-State Extended  
18 Unemployment Compensation Act of 1970 are reduced under an  
19 order issued under section 252 of the Balanced Budget and  
20 Emergency Deficit Control Act of 1985, the total extended  
21 benefit amount payable to an individual with respect to his  
22 applicable benefit year must be reduced by an amount equal  
23 to the aggregate of the reductions under 39-51-2509 in the  
24 weekly amounts paid to the individual."

25 **Section 21.** Section 39-51-2602, MCA, is amended to

1 read:

2 **"39-51-2602. Approved trade-readjustment training under**  
3 **federal programs.** (1) Notwithstanding any other provisions  
4 of this chapter, no otherwise eligible individual may be  
5 denied benefits for any week:

6 (a) because ~~he is~~ of participation in training approved  
7 under Section 236(a)(1) of the federal Trade Act of 1974, or  
8 under Title III of the federal Job Training Partnership Act;

9 (b) ~~in--which--he--is~~ because of participation in such  
10 approved training described in subsection (1)(a) by reason  
11 of leaving work to enter such the training if the work left  
12 is not suitable employment; or

13 (c) because of the application to any such week in  
14 training of provisions in this chapter or any federal  
15 unemployment insurance law administered by this agency,  
16 relating to availability for work, active search for work,  
17 or refusal to accept work.

18 (2) For purposes of this section, "suitable employment"  
19 means work of a substantially equal or higher skill level  
20 than the individual's past adversely affected employment, as  
21 defined for purposes of the federal Trade Act of 1974 and  
22 the federal Job Training Partnership Act, and for which the  
23 wages are not less than 80% of the individual's average  
24 weekly wage as determined for the purposes of the federal  
25 Trade Act of 1974 and the federal Job Training Partnership

1 Act."

2 **Section 22.** Section 39-51-1121, MCA, is amended to  
3 read:

4 "39-51-1121. **Definitions.** As used in this part and part  
5 12, the following definitions apply:

6 (1) "Computation date" means the reporting period  
7 ending September 30 preceding the calendar year for which a  
8 covered employer's contribution rate is effective.

9 (2) "Cutoff date" means ~~December--31~~ November 30  
10 immediately following the computation date. The department  
11 may extend the cutoff date in meritorious cases.

12 (3) "Deficit employer" means an employer who is subject  
13 under this chapter and who has established a record of  
14 accumulated benefits charged to the employer's account in  
15 excess of the employer's accumulated contributions paid as  
16 of the cutoff date.

17 ~~{4}--"Department"--means--the--department--of--labor--and~~  
18 ~~industry-~~

19 {5}{4} "Eligible employer" means an employer who has  
20 been subject under this chapter for the 3 fiscal years  
21 immediately preceding the computation date and who has:

22 ~~{a}--filed--all--contribution--reports--prescribed--by--the~~  
23 ~~department;~~

24 ~~{b}--paid--all--contributions--and--all--assessments--under~~  
25 ~~39-51-404{4}--and--penalties--and--interest--thereon;~~

1 ~~{c}{a}~~ established a record of accumulated  
2 contributions in excess of benefits charged to the  
3 employer's account; and

4 ~~{d}{b}~~ paid wages in at least 1 of the 8 calendar  
5 quarters preceding the computation date.

6 ~~{6}{5}~~ "Fiscal year" means the four consecutive  
7 calendar quarters ending on September 30.

8 ~~{7}{6}~~ "Governmental entities" means the state or any  
9 political subdivision of the state or an instrumentality of  
10 the state or a political subdivision, including any  
11 employing unit funded directly by tax levies.

12 {7} "New employer" means an employer who:

13 {a} has not been subject to the provisions of this  
14 chapter for the 3 fiscal years immediately preceding the  
15 computation date; and

16 {b} has established a record of accumulated  
17 contributions in excess of benefits charged to the  
18 employer's account.

19 (8) "Taxable wage base" means the amount of wages  
20 subject to contributions and to assessments under  
21 39-51-404(4) for each calendar year. Payment of  
22 contributions and of assessments under 39-51-404(4) may  
23 apply only to wages paid up to and including the amount  
24 specified in 39-51-1108.

25 ~~{9}--"Unrated employer"--means--an--employer--who--is--subject~~

1 ~~under this chapter and who does not meet all the criteria of~~  
2 ~~an eligible or a deficit employer."~~

3 **Section 23.** Section 39-51-1125, MCA, is amended to  
4 read:

5 "39-51-1125. Computation of payments in lieu of  
6 contributions. (1) After June 30, 1987, qualified employers  
7 electing to make payments in lieu of contributions shall pay  
8 into the fund an amount equivalent to the full amount of  
9 regular benefits plus the state's share of extended benefits  
10 paid to individuals based on wages paid by the employing  
11 unit. After December 31, 1978, governmental entities shall  
12 pay the full amount of extended benefits.

13 (2) If benefits paid an individual are based on wages  
14 paid by both the employer and one or more other employers,  
15 the amount payable by any one employer to the fund bears the  
16 same ratio to total benefits paid to the individual as the  
17 base period wages paid to the individual by such employer  
18 bear to the total amount of base period wages paid to the  
19 individual by all the individual's base period employers.

20 (3) If the base period wages of an individual include  
21 wages from more than one such employer, the amount to be  
22 paid into the fund with respect to the benefits paid to the  
23 individual shall be prorated among the liable employers in  
24 proportion to the wages paid to the individual by each such  
25 employer during the base period.

1 (4) The amount of payment required from employers shall  
2 be ascertained by the department monthly and becomes due and  
3 payable by the employer quarterly as directed in this  
4 chapter. Penalty and interest for delinquency shall be  
5 assessed such employers as specified in 39-51-1301.

6 (5) A payment may not be required under this section  
7 with respect to benefits paid to an individual if the  
8 qualified employer continues to provide employment to the  
9 individual with no reduction in hours or wages."

10 **Section 24.** Section 39-51-1212, MCA, is amended to  
11 read:

12 "39-51-1212. Experience rating for governmental  
13 entities. (1) Governmental entities newly covered under this  
14 chapter after December 31, 1974, shall make payments for the  
15 period prior to July 1, 1977, equal to 0.4% of total wages  
16 paid employees for services in employment during the  
17 calendar quarter and for the period after July 1, 1977,  
18 shall make payments at the median rate.

19 (2) The rates of governmental entities who have  
20 accumulated experience rating credits shall be adjusted  
21 annually as follows with each governmental entity assigned a  
22 rate based upon:

23 (a) its benefit cost experience, to be arrived at by  
24 dividing the total sum of benefits charged to the employer's  
25 account for all past periods which are completed

1 transactions by December 31 by total wages from date of  
2 subjectivity of the employing unit through December 31; and

3 (b) the benefit cost for all past years of governmental  
4 entities electing to pay contributions compared with total  
5 payrolls reported for all past years by these governmental  
6 entities used as a median, with the rates so fixed using the  
7 median that the rates will, when applied to the total annual  
8 payroll for subject governmental entities, yield total paid  
9 contributions equaling approximately the total benefit  
10 costs.

11 (3) New governmental entities electing to pay  
12 contributions shall be assigned the median rate for the year  
13 in which they become subject.

14 (4) At no time may the minimum rate be less than 0.1%  
15 or the maximum rate be greater than 1.5%. The rates are to  
16 be graduated at one-tenth intervals.

17 (5) In the event benefit charges exceed contributions  
18 paid in the last 2 completed fiscal years, governmental  
19 entities' rates will be adjusted by increasing all rates to  
20 the next higher schedule.

21 (6) The computed rate is effective July 1 of each year.

22 (7) Governmental entities must be charged for their  
23 share of the total benefits paid to a claimant if the  
24 governmental entity contributed wages during the claimant's  
25 base period. The benefit charged must be based on the

1 percentage of wages paid by the governmental entity as  
2 compared to the total wages paid by all employers in the  
3 claimant's base period.

4 (8) A payment may not be required under this section  
5 with respect to benefits paid to an individual if the  
6 governmental employer continues to provide employment to the  
7 individual with no reduction in hours or wages."

8 **Section 25.** Section 39-51-1213, MCA, is amended to  
9 read:

10 **"39-51-1213. Classification of employers for experience**  
11 **rating purposes.** (1) The department shall for each calendar  
12 year classify employers in accordance with their actual  
13 experience in the payment of contributions and with respect  
14 to benefits charged against their accounts, with  
15 contribution rates reflecting benefit experience. Each  
16 employer's rate for a calendar year shall be determined on  
17 the basis of the employer's record as of October 1 of the  
18 preceding calendar year.

19 (2) In making the classification, each eligible and  
20 deficit employer's contribution rate is determined in the  
21 manner set forth below:

22 (a) Each employer is given an "experience factor" which  
23 is contributions paid since October 1, 1981, minus benefits  
24 charged on each employer's account since October 1, 1981,  
25 divided by the employer's average annual taxable payroll

1 rounded to the next lower dollar amount for the 3 fiscal  
2 years immediately preceding the computation date. The  
3 computation of the "experience factor" shall be to six  
4 decimal places.

5 (b) Schedules shall be prepared listing all eligible  
6 and deficit employers in inverse numerical order of their  
7 experience factors. There shall be listed on such schedules  
8 for each employer in addition to the experience factor:

9 (i) the amount of the employer's taxable payroll for  
10 the fiscal year ending on the computation date; and

11 (ii) the cumulative total consisting of the sum of the  
12 employer's taxable payroll for the fiscal year ending on the  
13 computation date and the corresponding taxable payrolls for  
14 all other employers preceding that employer on the  
15 schedules.

16 (3) The cumulative taxable payroll amounts listed on  
17 the schedules provided for in 39-51-1218 shall be segregated  
18 into groups that will yield approximately the average tax  
19 rate according to the tax schedule assigned for that  
20 particular taxable year. Each group shall be identified by  
21 the rate class number listed in the table which represents  
22 the percentage limits of each group. Each employer on the  
23 schedules is assigned that contribution rate opposite that  
24 employer's rate class for the tax schedule in effect for the  
25 taxable year.

1 (4) (a) If the grouping of rate classes requires the  
2 inclusion of exactly one-half of an employer's taxable  
3 payroll, the employer is assigned the lower of the two rates  
4 designated for the two classes in which the halves of that  
5 employer's taxable payroll are so required.

6 (b) If the group of rate classes requires the inclusion  
7 of a portion other than exactly one-half of an employer's  
8 taxable payroll, the employer is assigned the rate  
9 designated for the class in which the greater part of that  
10 employer's taxable payroll is so required.

11 (c) If one or more employers on the schedules have  
12 experience factors identical to that of the last employer  
13 included in a particular rate class, all such employers are  
14 included in and assigned the contribution rate specified for  
15 such class, notwithstanding the provisions of 39-51-1214.

16 (5) If the taxable payroll amount or the experience  
17 factor or both such taxable payroll amount and experience  
18 factor of any eligible or deficit employer listed on the  
19 schedules is changed, the employer is placed in that  
20 position on the schedules which the employer would have  
21 occupied had that employer's taxable payroll amount or  
22 experience factor as changed been used in determining that  
23 employer's position in the first instance, but such change  
24 does not affect the position or rate classification of any  
25 other employer listed on the schedules and does not affect



1 the rate determination for previous years.

2 (6) Deficit--employers An employer who have has not  
3 filed all required payroll reports or paid all contributions  
4 taxes, penalties, and interest due by the cutoff date must  
5 be assigned the maximum contribution rate in effect for the  
6 taxable year for his classification as an eligible, deficit,  
7 or new employer."

8 **Section 26.** Section 39-51-1214, MCA, is amended to  
9 read:

10 "**39-51-1214. Benefit payments chargeable to employer**  
11 **experience rating accounts.** (1) Except for cost  
12 reimbursement, benefits paid shall be charged to the account  
13 of each of the claimant's base period employers. The benefit  
14 charged must be based on the percentage of wages paid by the  
15 employer as compared to the total wages paid by all  
16 employers in the claimant's base period.

17 (2) No charge shall be made to the account of such  
18 covered employer with respect to benefits paid under the  
19 following situations:

20 (a) if paid to a worker who terminated his services  
21 voluntarily without good cause attributable to such covered  
22 employer or who had been discharged for misconduct in  
23 connection with such services;

24 (b) if paid in accordance with the extended benefit  
25 program triggered by either national or state indicators; or

1 (c) if the base period employer continues to provide  
2 employment with no reduction in hours or wages; or

3 (d) if benefits are paid to claimants who are in  
4 training approved under 39-51-2307."

5 **Section 27.** Section 39-51-1217, MCA, is amended to  
6 read:

7 "**39-51-1217. Schedule of rates assigned based on trust**  
8 **fund reserve.** (1) The rate schedule for each calendar year  
9 is assigned based upon the ratio of the trust fund balance  
10 as of ~~December--31~~ November 30 prior to the rate year to  
11 total wages in covered employment for the 12-month period  
12 ending June 30 prior to the computation date.

13 (2) The ratio at the top of each tax schedule in the  
14 tax table shown in 39-51-1218 represents the minimum fund  
15 level required for a specific tax schedule to be in effect.

16 (3) Employer rates are assigned in accord with the  
17 rates provided in each schedule for eligible, ~~unrated,~~ and  
18 deficit employers, based upon their experience as defined in  
19 this section.

20 (4) For the calendar year 1990 and each year  
21 thereafter, any employer classified as unrated a new  
22 employer must be assigned a rate equal to the average rate  
23 of contributions paid by employers in the same major  
24 industrial classification for the calendar year preceding  
25 the computation date, plus an adjustment for the difference

1 between the average tax rate assigned for the previous  
 2 calendar year and the average rate in effect for the current  
 3 calendar year. At no time may an-unrated a new employer be  
 4 assigned a rate lower than 1%. The computation of the  
 5 average rate of contributions in a major industrial  
 6 classification must exclude those employer accounts that are  
 7 not eligible for the computation of an experience rating  
 8 solely by reason of insufficient experience. The department  
 9 shall develop the major industrial classifications for the  
 10 state and shall annually determine the contribution rate for  
 11 each classification."

12 **Section 28.** Section 39-51-1218, MCA, is amended to  
 13 read:

14 "39-51-1218. Rate schedules.  
 15 SCHEDULES OF CONTRIBUTION RATES -- Part I  
 16 Sched. Sched. Sched. Sched.  
 17 I II III IV  
 18 Minimum Ratio of  
 19 Fund to Total Wages (.0260) (.0245) (.0225) (.0200)  
 20 Average Tax Rate 1.4 1.6 1.8 2.0

21	Rate Class	Contribution Rates For Eligible Employers			
22	1	0.0%	0.1%	0.3%	0.5%
23	2	0.1	0.3	0.5	0.7

1	3	0.3	0.5	0.7	0.9
2	4	0.5	0.7	0.9	1.1
3	5	0.7	0.9	1.1	1.3
4	6	0.9	1.1	1.3	1.5
5	7	1.1	1.3	1.5	1.7
6	8	1.3	1.5	1.7	1.9
7	9	1.5	1.7	1.9	2.1
8	10	1.7	1.9	2.1	2.3

9 **Contribution-Rates-For-Unrated-Employers**  
 10 2.0% 2.2% 2.4% 2.6%

11	Rate Class	Contribution Rates For Deficit Employers			
12	1	3.2%	3.4%	3.6%	3.8%
13	2	3.4	3.6	3.8	4.0
14	3	3.6	3.8	4.0	4.2
15	4	3.8	4.0	4.2	4.4
16	5	4.0	4.2	4.4	4.6
17	6	4.2	4.4	4.6	4.8
18	7	4.4	4.6	4.8	5.0
19	8	4.6	4.8	5.0	5.2
20	9	4.8	5.0	5.2	5.4
21	10	6.4	6.4	6.4	6.4

1           **SCHEDULES OF CONTRIBUTION RATES -- Part II**

2       Sched.   Sched.   Sched.   Sched.   Sched.   Sched.

3           V       VI       VII       VIII      IX       X

4       (.0170) (.0135) (.0095) (.0075) (.0050) (.....)

5       2.2     2.4     2.6     2.8     3.0     3.2

6           **Contribution Rates For Eligible Employers**

7       0.7%    0.9%    1.1%    1.3%    1.5%    1.7%

8       0.9     1.1     1.3     1.5     1.7     1.9

9       1.1     1.3     1.5     1.7     1.9     2.1

10      1.3     1.5     1.7     1.9     2.1     2.3

11      1.5     1.7     1.9     2.1     2.3     2.5

12      1.7     1.9     2.1     2.3     2.5     2.7

13      1.9     2.1     2.3     2.5     2.7     2.9

14      2.1     2.3     2.5     2.7     2.9     3.1

15      2.3     2.5     2.7     2.9     3.1     3.3

16      2.5     2.7     2.9     3.1     3.3     3.5

17           **Contribution Rates For Unrated Employers**

18       2.0%    3.0%    3.2%    3.4%    3.6%    3.8%

19           **Contribution Rates For Deficit Employers**

20       4.0%    4.2%    4.4%    4.6%    4.8%    5.0%

1           4.2     4.4     4.6     4.8     5.0     5.2

2           4.4     4.6     4.8     5.0     5.2     5.4

3           4.6     4.8     5.0     5.2     5.4     5.6

4           4.8     5.0     5.2     5.4     5.6     5.8

5           5.0     5.2     5.4     5.6     5.8     6.0

6           5.2     5.4     5.6     5.8     6.0     6.2

7           5.4     5.6     5.8     6.0     6.2     6.4

8           5.6     5.8     6.0     6.2     6.4     6.4

9           6.4     6.4     6.4     6.4     6.4     6.4"

10           **Section 29.** Section 39-51-3201, MCA, is amended to  
11 read:

12           "39-51-3201. Making false statement or representation  
13 or failing to disclose material fact in order to obtain or  
14 increase benefits -- administrative penalty and remedy. (1)  
15 A person who makes a false statement or representation  
16 knowing it to be false or knowingly fails to disclose a  
17 material fact in order to obtain or increase any benefit or  
18 other payment under this chapter or under an employment  
19 security law of any other state or territory or the federal  
20 government, either for himself or for any other person, is:  
21           ††(a) disqualified for benefits thereafter for a  
22 period of not more than 52 weeks, beginning with the first  
23 compensable week following the date of such determination by  
24 the department, the length of time of the disqualification  
25 as herein described to be determined by the department in

1 accordance with the severity of each case; and  
 2 ~~(2)(b)~~ required to repay to the department, either  
 3 directly or as authorized by the department, by offset of  
 4 future benefits to which he may be entitled, or by a  
 5 combination of both such methods, a sum equal to the amount  
 6 wrongfully received by him plus ~~interest-at-the-rate-of-10%~~  
 7 ~~a-year-computed-from-the-time-the-false-statement-or~~  
 8 ~~representation-or-the-failure-to-disclose-a-material-fact~~  
 9 ~~occurred, except that future benefits may not be used to~~  
 10 ~~offset-the-interest-due.~~ a penalty equivalent to 33% of the  
 11 fraudulently obtained benefits, except that future benefits  
 12 may not be used to offset the penalty due. However, he is  
 13 not required to repay any amount wrongfully obtained more  
 14 than 5 years prior to the date of the department's  
 15 determination that he made false statements, willful  
 16 nondisclosure, or misrepresentation.  
 17 (2) All money accruing from the penalty under  
 18 subsection (1)(b) must be deposited in the federal special  
 19 revenue account. Money deposited in that account may be  
 20 appropriated to the department to be used to detect and  
 21 collect unpaid taxes and overpayments of benefits to the  
 22 extent that federal grant revenues are inadequate for these  
 23 purposes. Money in the account not appropriated for these  
 24 purposes must be transferred by the department to the  
 25 unemployment insurance trust fund at the end of each fiscal

1 year."

2 **Section 30.** Section 39-51-3202, MCA, is amended to  
 3 read:

4 **"39-51-3202. Making false statement or representation**  
 5 **or failing to disclose material fact in order to obtain or**  
 6 **increase benefits -- criminal penalty.** (1) A person who, in  
 7 order to obtain or increase for personal gain or for any  
 8 other person benefits under this chapter or under an  
 9 employment security law of any other state or territory or  
 10 the federal government, knowingly makes a false statement or  
 11 representation or knowingly fails to disclose a material  
 12 fact is guilty of a crime under 45-7-203, and the department  
 13 may cause criminal proceedings to be initiated against the  
 14 person.

15 (2) A person will be required to repay to the  
 16 department an amount as determined by 39-51-3201~~(2)~~(1)(b).

17 (3) For purposes of this section, restitution awarded  
 18 under this section must include a sum equal to the amount  
 19 wrongfully received plus ~~10%--interest--a--year,~~ a penalty  
 20 equivalent to 33% of the amount wrongfully received.  
 21 ~~notwithstanding-the-provisions-of-25-9-205.~~ All money  
 22 accruing from the penalty must be deposited in the federal  
 23 special revenue account. Money deposited in that account may  
 24 be appropriated to the department to be used to detect and  
 25 collect unpaid taxes and overpayments of benefits to the

1 extent that federal grant revenues are inadequate for these  
 2 purposes. Money in the account not appropriated for these  
 3 purposes must be transferred by the department to the  
 4 unemployment insurance trust fund at the end of each fiscal  
 5 year."

6 **Section 31.** Section 39-51-2107, MCA, is amended to  
 7 read:

8 "39-51-2107. Services for remuneration to be performed  
 9 during benefit year as condition for receiving benefits in  
 10 second benefit year -- amount required. An individual who  
 11 received benefits during a benefit year must perform  
 12 services for remuneration ~~after-the-beginning-of--that--year~~  
 13 following the initial separation from employment in the  
 14 previous benefit year as a condition for receiving benefits  
 15 in a second benefit year. ~~The--service-may-be-in-either~~  
 16 ~~covered--or--noncovered---employment;~~ The service must  
 17 constitute employment as defined in 39-51-203 and 39-51-204.  
 18 However, the individual must have earned the lesser of  
 19 three-thirteenths of his high quarter of his second benefit  
 20 year or 6 times his weekly benefit amount of that same  
 21 year."

22 **Section 32.** Section 39-51-2302, MCA, is amended to  
 23 read:

24 "39-51-2302. Disqualification for leaving work without  
 25 good cause. (1) An individual shall be disqualified for

1 benefits if he has left work without good cause attributable  
 2 to his employment.

3 (2) He may not be disqualified if the department finds  
 4 that he left his employment because of personal illness or  
 5 injury not associated with misconduct ~~or-left-his-employment~~  
 6 upon the advice of a licensed and practicing physician and,  
 7 after recovering from his illness or injury when recovery is  
 8 certified by a licensed and practicing physician, he  
 9 returned to his employer and offered his service and his  
 10 regular or comparable suitable work was not available, if so  
 11 found by the department, provided he is otherwise eligible.

12 (3) To requalify for benefits, an individual must  
 13 perform services other than self-employment for which  
 14 remuneration is received equal to or in excess of six times  
 15 his weekly benefit amount subsequent to the week in which  
 16 the act causing the disqualification occurred unless he has  
 17 been in regular attendance at an educational institution  
 18 accredited by the state of Montana for at least 3  
 19 consecutive months from the date of his enrollment."

20 **Section 33.** Section 39-51-2303, MCA, is amended to  
 21 read:

22 "39-51-2303. Disqualification for discharge or  
 23 suspension due to misconduct. An individual shall be  
 24 disqualified for benefits after being discharged or  
 25 suspended:

1 (1) for misconduct connected with the individual's work  
2 or affecting the individual's employment until the  
3 individual has performed services, other than  
4 self-employment, for which remuneration is received equal to  
5 or in excess of eight times the individual's weekly benefit  
6 amount subsequent to the week in which the act causing the  
7 disqualification occurred;

8 (2) for gross misconduct connected with the  
9 individual's work or committed on the employer's premises,  
10 as determined by the department, for a period of 52 weeks."

11 NEW SECTION. **Section 34.** Repealer. Section 39-51-2308,  
12 MCA, is repealed.

13 NEW SECTION. **Section 35.** Severability. If a part of  
14 [this act] is invalid, all valid parts that are severable  
15 from the invalid part remain in effect. If a part of [this  
16 act] is invalid in one or more of its applications, the part  
17 remains in effect in all valid applications that are  
18 severable from the invalid applications.

19 NEW SECTION. **Section 36.** Effective date. [This act] is  
20 effective 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 HB0726, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to generally revise and clarify the unemployment insurance laws.

ASSUMPTIONS:

1. Two reimbursable or government employers each year would be relieved of benefit charges resulting in a minimal negative effect on the trust fund.
2. 100 employers would still be delinquent by the cutoff date in any one year. Some employers' rate would be less than the rate used now and some would be greater. Increases and decreases are assumed to be offsetting with no net effect on the expendable trust fund.
3. Testing the trust fund balance November 30 as compared to December 31, would reduce trust fund adequacy by \$3.5 million. Taxable wages are estimated to be \$3,156,350,000 in FY92. The higher balance on the November 30 calculation date would reduce the tax rate by 0.2% and therefore receipts by \$4,300,000 in FY92.
4. HB0726 would provide an additional means by which the department can enforce collection of past due contributions. There is insufficient data to estimate the increase in the trust fund balance.
5. No more than 10 claimant disqualification cases would develop each year; 50% would be disqualified. Average weeks duration of claimants is estimated to be 14 weeks each year and the average weekly benefit amount to be \$129 in FY92 and \$131 in FY93.
6. The weekly benefit amount of claimants under the Extended Benefit program would be reduced in the event of a Gramm-Rudman-Hollings Act sequester. Under HB0726, the state portion of extended benefits be reduced to match the federal reduction. The E.B. program is not expected to be active during the biennium.
7. The 33% one time penalty is approximately equal to the accrued interest now charged for overpayments due to fraud. Interest is currently charged retroactively to the date the overpayment occurred. Because the age of such cases extend for at least 2 years, the penalty would approximate the retroactive and continuing interest charges under current law.

FISCAL IMPACT:

see next page

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning                      2-14-91

  
\_\_\_\_\_  
ERNEST BERGSAGEL, PRIMARY SPONSOR                      DATE  
2/16/91

Fiscal Note for HB0726, as introduced

HB 726

Fiscal Note Request, HB0726, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

	<u>FY92</u>			<u>FY93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
UI Benefits	43,000,000	42,990,970	(9,030)	42,000,000	41,990,830	(9,170)
<u>Funding:</u>						
UI Trust Fund	43,000,000	42,990,970	(9,030)	42,000,000	41,990,830	(9,170)
<u>Revenues:</u>						
UI Trust Fund	43,525,000	39,225,000	(4,300,000)	45,325,000	45,325,000	0

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Section 39-51-1217, MCA, as proposed, would reduce the adequacy of the UI trust fund by \$3.5 million.

HB 726



1 HOUSE BILL NO. 726  
 2 INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL,  
 3 O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE  
 4 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 7 CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES";  
 8 TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM  
 9 THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR  
 10 AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME  
 11 FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO  
 12 CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND  
 13 INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER  
 14 LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY  
 15 PAYMENT OF BENEFITS TO ALIENS; ~~TO REVISE PAYMENT OF EXTENDED~~  
 16 ~~BENEFITS~~; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS  
 17 THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO  
 18 REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO  
 19 PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS  
 20 WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE  
 21 FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN  
 22 OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST  
 23 BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND  
 24 BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR  
 25 LEAVING WORK WITHOUT GOOD CAUSE; ~~TO DISQUALIFY AN INDIVIDUAL~~

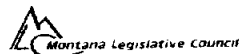
1 ~~FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK~~  
 2 ~~DUE TO MISCONDUCT~~; TO REPEAL DISQUALIFICATION FOR BENEFITS  
 3 BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201,  
 4 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602,  
 5 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110,  
 6 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214,  
 7 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303,  
 8 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110,  
 9 39-51-2302, ~~39-51-2303, 39-51-2507, 39-51-2510,~~ 39-51-2602,  
 10 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION  
 11 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

14 **Section 1.** Section 39-51-201, MCA, is amended to read:  
 15 "39-51-201. **General definitions.** As used in this  
 16 chapter, unless the context clearly requires otherwise, the  
 17 following definitions apply:

18 (1) "Annual payroll" means the total amount of wages  
 19 paid by an employer, regardless of the time of payment, for  
 20 employment during a calendar year.

21 (2) "Base period" means the first four of the last five  
 22 completed calendar quarters immediately preceding the first  
 23 day of an individual's benefit year. However, in the case of  
 24 a combined-wage claim pursuant to the arrangement approved  
 25 by the secretary of labor of the United States, the base



1 period shall be that applicable under the unemployment law  
 2 of the paying state. For an individual who fails to meet the  
 3 qualifications of 39-51-2105 or a similar statute of another  
 4 state due to a temporary total disability as defined in  
 5 39-71-116 or a similar statute of another state or the  
 6 United States, the base period means the first four quarters  
 7 of the last five quarters preceding the disability if a  
 8 claim for unemployment benefits is filed within 24 months of  
 9 the date on which the individual's disability was incurred.

10 (3) "Benefits" means the money payments payable to an  
 11 individual, as provided in this chapter, with respect to the  
 12 individual's unemployment.

13 (4) "Benefit year", with respect to any individual,  
 14 means the 52-consecutive-week period beginning with the  
 15 first day of the calendar week in which such individual  
 16 files a valid claim for benefits, except that the benefit  
 17 year shall be 53 weeks if filing a new valid claim would  
 18 result in overlapping any quarter of the base year of a  
 19 previously filed new claim. A subsequent benefit year may  
 20 not be established until the expiration of the current  
 21 benefit year. However, in the case of a combined-wage claim  
 22 pursuant to the arrangement approved by the secretary of  
 23 labor of the United States, the base period is the period  
 24 applicable under the unemployment law of the paying state.

25 (5) "Board" means the board of labor appeals provided

1 for in Title 2, chapter 15, part 17.

2 (6) "Calendar quarter" means the period of 3  
 3 consecutive calendar months ending on March 31, June 30,  
 4 September 30, or December 31.

5 (7) "Contributions" means the money payments to the  
 6 state unemployment insurance fund required by this chapter  
 7 but does not include assessments under 39-51-404(4).

8 (8) "Department" means the department of labor and  
 9 industry provided for in Title 2, chapter 15, part 17.

10 (9) "Employing unit" means any individual or  
 11 organization, including the state government, any of its  
 12 political subdivisions or instrumentalities, any  
 13 partnership, association, trust, estate, joint-stock  
 14 company, insurance company, or corporation, whether domestic  
 15 or foreign, or the receiver, trustee in bankruptcy, trustee  
 16 or successor thereof, or the legal representative of a  
 17 deceased person which has or had in its employ one or more  
 18 individuals performing services for it within this state,  
 19 except as provided under ~~subsections--(8)--and--(9)--of~~  
 20 ~~39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals  
 21 performing services within this state for any employing unit  
 22 which maintains two or more separate establishments within  
 23 this state are considered to be employed by a single  
 24 employing unit for all the purposes of this chapter. Each  
 25 individual employed to perform or assist in performing the

1 work of any agent or employee of an employing unit is deemed  
 2 to be employed by such employing unit for the purposes of  
 3 this chapter, whether such individual was hired or paid  
 4 directly by such employing unit or by such agent or  
 5 employee, provided the employing unit has actual or  
 6 constructive knowledge of the work.

7 (10) "Employment office" means a free public employment  
 8 office or branch thereof operated by this state or  
 9 maintained as a part of a state-controlled system of public  
 10 employment offices or such other free public employment  
 11 offices operated and maintained by the United States  
 12 government or its instrumentalities as the department may  
 13 approve.

14 (11) "Fund" means the unemployment insurance fund  
 15 established by this chapter to which all contributions and  
 16 payments in lieu of contributions are required to be paid  
 17 and from which all benefits provided under this chapter  
 18 shall be paid.

19 (12) "Gross misconduct" means a criminal act, other than  
 20 a violation of a motor vehicle traffic law, for which an  
 21 individual has been convicted in a criminal court or has  
 22 admitted or conduct which demonstrates a flagrant and wanton  
 23 disregard of and for the rights or title or interest of a  
 24 fellow employee or the employer.

25 (13) "Hospital" means an institution which has been

1 licensed, certified, or approved by the state as a hospital.

2 (14) "Independent contractor" means an individual who  
 3 renders service in the course of an occupation and:

4 (a) has been and will continue to be free from control  
 5 or direction over the performance of the services, both  
 6 under his contract and in fact; and

7 (b) is engaged in an independently established trade,  
 8 occupation, profession, or business.

9 (15) (a) "Institution of higher education", for the  
 10 purposes of this part, means an educational institution  
 11 which:

12 (i) admits as regular students only individuals having  
 13 a certificate of graduation from a high school or the  
 14 recognized equivalent of such a certificate;

15 (ii) is legally authorized in this state to provide a  
 16 program of education beyond high school;

17 (iii) provides an educational program for which it  
 18 awards a bachelor's or higher degree or provides a program  
 19 which is acceptable for full credit toward such a degree, a  
 20 program of postgraduate or postdoctoral studies, or a  
 21 program of training to prepare students for gainful  
 22 employment in a recognized occupation; and

23 (iv) is a public or other nonprofit institution.

24 (b) Notwithstanding any of the foregoing provisions of  
 25 this subsection, all colleges and universities in this state

1 are institutions of higher education for purposes of this  
2 part.

3 (16) "State" includes, in addition to the states of the  
4 United States of America, the District of Columbia, Puerto  
5 Rico, the Virgin Islands, and the Dominion of Canada.

6 (17) "Taxes" means contributions and assessments  
7 required under this chapter but does not include penalties  
8 or interest for past-due or unpaid contributions or  
9 assessments.

10 ~~(17)~~(18) "Unemployment insurance administration fund"  
11 means the unemployment insurance administration fund  
12 established by this chapter from which administrative  
13 expenses under this chapter shall be paid.

14 ~~(18)~~(19) (a) "Wages" means all remuneration payable for  
15 personal services, including commissions and bonuses, the  
16 cash value of all remuneration payable in any medium other  
17 than cash, and backpay received pursuant to a dispute  
18 related to employment. The reasonable cash value of  
19 remuneration payable in any medium other than cash shall be  
20 estimated and determined in accordance with rules prescribed  
21 by the department.

22 (b) The term "wages" does not include:

23 (i) the amount of any payment made by the employer, if  
24 the payment was made under a plan established for the  
25 employees in general or for a specific class or classes of

1 employees, to or on behalf of the employee for:

2 (A) retirement;

3 (B) sickness or accident disability, ~~but in the case of~~  
4 ~~payments made by an employer directly to an employee, only~~  
5 ~~those payments made~~ under a workers' compensation law ~~are~~  
6 ~~excluded from "wages";~~

7 (C) medical and hospitalization expenses in connection  
8 with sickness or accident disability; or

9 (D) death;

10 (ii) remuneration paid by any county welfare office from  
11 public assistance funds for services performed at the  
12 direction and request of such county welfare office.

13 ~~(19)~~(20) "Week" means a period of 7 consecutive calendar  
14 days ending at midnight on Saturday.

15 ~~(20)~~(21) An individual's "weekly benefit amount" means  
16 the amount of benefits the individual would be entitled to  
17 receive for 1 week of total unemployment."

18 **Section 2.** Section 39-51-202, MCA, is amended to read:

19 **"39-51-202. Employer defined.** "Employer" means:

20 (1) any employing unit whose total annual payroll  
21 within either the current or preceding calendar year equals  
22 or exceeds the sum of \$1,000;

23 (2) any agricultural employing unit that pays \$20,000  
24 or more in cash to workers for agricultural labor in any  
25 quarter in the current or preceding calendar year or employs

1 10 or more workers in agricultural labor on 20 days in 20  
 2 different weeks during the current or preceding calendar  
 3 year;

4 (3) any domestic employing unit that pays \$1,000 or  
 5 more in cash for domestic service in any quarter during the  
 6 current or preceding calendar year;

7 (2)(4) any individual or employing unit which acquired  
 8 the organization, trade, or business or substantially all of  
 9 the assets thereof of another which at the time of such  
 10 acquisition was an employer subject to this chapter;

11 (3)(5) any individual or employing unit which acquired  
 12 the organization, trade, or business or substantially all  
 13 the assets thereof of another employing unit not an employer  
 14 subject to this chapter and which, if subsequent to such  
 15 acquisition it were treated as a single unit with such other  
 16 employing unit, would be an employer under subsection (1) of  
 17 this section;

18 (4)(6) any employing unit not an employer by reason of  
 19 any other subsection of this section for which, within  
 20 either the current or preceding calendar year, service is or  
 21 was performed with respect to which such employing unit is  
 22 liable for any federal tax against which credit may be taken  
 23 for contributions paid into a state unemployment fund or an  
 24 employing unit which, as a condition for approval of this  
 25 chapter for full tax credit against the tax imposed by the

1 Federal Unemployment Tax Act, is required pursuant to such  
 2 act to be an employer under this chapter;

3 (5)(7) any employing unit which, having become an  
 4 employer under subsection (1), (2), (3), (4), (5),  
 5 or (6) has not, under 39-51-1101, ceased to be an  
 6 employer subject to this chapter; or

7 (6)(8) for the effective period of its election  
 8 pursuant to 39-51-1102, any other employing unit which has  
 9 elected to become fully subject to this chapter."

10 **Section 3.** Section 39-51-203, MCA, is amended to read:

11 **"39-51-203. Employment defined.** (1) "Employment",  
 12 subject to other provisions of this section, means service  
 13 by an individual or by an officer of a corporation,  
 14 including service in interstate commerce, performed for  
 15 wages or under any contract of hire, written or oral,  
 16 express or implied.

17 (2) (a) The term "employment" includes an individual's  
 18 entire service performed within or both within and without  
 19 this state if:

20 (i) the service is localized in this state; or  
 21 (ii) the service is not localized in any state but some  
 22 of the service is performed in this state and:

23 (A) the base of operations or, if there is no base of  
 24 operations, then the place from which such service is  
 25 directed or controlled, is in this state; or

1 (B) the base of operations or place from which such  
2 service is directed or controlled is not in any state in  
3 which some part of the service is performed, but the  
4 individual's residence is in this state.

5 (b) Service is considered to be localized within a  
6 state if:

7 (i) the service is performed entirely within such  
8 state; or

9 (ii) the service is performed both within and without  
10 such state, but the service performed without such state is  
11 incidental to the individual's service within the state, for  
12 example, is temporary or transitory in nature or consists of  
13 isolated transactions.

14 (3) Service not covered under subsection (2) of this  
15 section and performed entirely without this state with  
16 respect to no part of which contributions are required and  
17 paid under an unemployment insurance law of any other state  
18 or of the federal government is considered to be employment  
19 subject to this chapter if the individual performing such  
20 services is a resident of this state and the department  
21 approves the election of the employing unit for whom such  
22 services are performed that the entire service of such  
23 individual is considered to be employment subject to this  
24 chapter.

25 (4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless  
2 and until it is shown to the satisfaction of the department  
3 that the individual is an independent contractor.

4 (5) The term "employment" includes service performed by  
5 an individual in the employ of this state or any of its  
6 instrumentalities (or in the employ of this state and one or  
7 more other states or their instrumentalities) for a hospital  
8 or institution of higher education located in this state.  
9 The term "employment" includes service performed by all  
10 individuals, including without limitations those individuals  
11 who work for the state of Montana, its universities, any of  
12 its colleges, public schools, components or units thereof,  
13 or any local government unit and one or more other states or  
14 their instrumentalities or political subdivisions whose  
15 services are compensated by salary or wages.

16 (6) The term "employment" includes service performed by  
17 an individual in the employ of a religious, charitable,  
18 scientific, literary, or educational organization.

19 (7) (a) The term "employment" includes the service of  
20 an individual who is a citizen of the United States  
21 performed outside the United States, except in Canada, in  
22 the employ of an American employer, other than service which  
23 is considered employment under the provisions of subsection  
24 (2) of this section or the parallel provisions of another  
25 state's law, if:

1 (i) the employer's principal place of business in the  
2 United States is located in this state;

3 (ii) the employer has no place of business in the United  
4 States, but:

5 (A) the employer is an individual who is a resident of  
6 this state;

7 (B) the employer is a corporation which is organized  
8 under the laws of this state; or

9 (C) the employer is a partnership or a trust and the  
10 number of the partners or trustees who are residents of this  
11 state is greater than the number who are residents of any  
12 other state; or

13 (iii) none of the criteria of sections (7)(a)(i) and  
14 (7)(a)(ii) of this subsection are met but the employer has  
15 elected coverage in this state or, the employer having  
16 failed to elect coverage in any state, the individual has  
17 filed a claim for benefits based on such service under the  
18 law of this state.

19 (b) An "American employer", for purposes of this  
20 subsection, means a person who is:

21 (i) an individual who is a resident of the United  
22 States;

23 (ii) a partnership if two-thirds or more of the partners  
24 are residents of the United States;

25 (iii) a trust if all of the trustees are residents of

1 the United States; or

2 (iv) a corporation organized under the laws of the  
3 United States or of any state.

4 ~~{8}--Agricultural--labor--exempted--under--39-51-204--is  
5 considered--employment--whenever--the--employing--unit--pays  
6 \$20,000--or--more--in--cash--to--workers--for--agricultural--labor--in  
7 any--quarter--in--the--current--or--preceding--calendar--year--or  
8 employs--10--or--more--workers--in--agricultural--labor--on--20--days  
9 in--20--different--weeks--during--the--current--or--preceding  
10 calendar--year--if--an--employer--including--but--not--limited--to  
11 an--employing--unit--providing--outfitter--and--guide--services--is  
12 otherwise--subject--to--this--chapter--and--has--agricultural  
13 employment--all--employees--engaged--in--agricultural--labor--must  
14 be--excluded--from--coverage--under--this--chapter--if--the  
15 employer--~~

16 ~~{a}--in--any--quarter--or--calendar--year--as--applicable  
17 does--not--meet--either--of--the--tests--relating--to--the--monetary  
18 amount--or--number--of--employees--and--days--worked--for--the  
19 subject--wages--attributable--to--agricultural--labor--and~~

20 ~~{b}--keeps--separate--books--and--records--to--account--for--the  
21 employment--of--persons--in--agricultural--labor--~~

22 ~~{9}--Domestic--service--exempted--under--39-51-204(i)(b)--is  
23 considered--employment--whenever--the--employing--unit--pays  
24 \$1,000--or--more--in--cash--for--domestic--service--in--any--quarter  
25 during--the--current--or--preceding--calendar--year--if--an~~

1 ~~employer is otherwise subject to this chapter and has~~  
 2 ~~domestic service employment, all employees engaged in~~  
 3 ~~domestic service must be excluded from coverage under this~~  
 4 ~~chapter if the employer:~~

5 ~~(a) does not meet the monetary payment test in any~~  
 6 ~~quarter or calendar year, as applicable, for the subject~~  
 7 ~~wages attributable to domestic service; and~~

8 ~~(b) keeps separate books and records to account for the~~  
 9 ~~employment of persons in domestic service."~~

10 **Section 4.** Section 39-51-204, MCA, is amended to read:

11 **"39-51-204. Exclusions from definition of employment.**

12 (1) The term "employment" does not include:

13 (a) agricultural labor, except as provided in  
 14 39-51-203(8); 39-51-202(2). If an employer is otherwise  
 15 subject to this chapter and has agricultural employment, all  
 16 employees engaged in agricultural labor must be excluded  
 17 from coverage under this chapter if the employer:

18 (i) in any quarter or calendar year, as applicable,  
 19 does not meet either of the tests relating to the monetary  
 20 amount or number of employees and days worked, for the  
 21 subject wages attributable to agricultural labor; and

22 (ii) keeps separate books and records to account for the  
 23 employment of persons in agricultural labor;

24 (b) domestic service in a private home, local college  
 25 club, or local chapter of a college fraternity or sorority,

1 except as provided in ~~39-51-203(9);~~ 39-51-202(3). If an  
 2 employer is otherwise subject to this chapter and has  
 3 domestic service employment, all employees engaged in  
 4 domestic service must be excluded from coverage under this  
 5 chapter if the employer:

6 (i) does not meet the monetary payment test in any  
 7 quarter or calendar year, as applicable, for the subject  
 8 wages attributable to domestic service; and

9 (ii) keeps separate books and records to account for the  
 10 employment of persons in domestic service;

11 (c) service performed as an officer or member of the  
 12 crew of a vessel on the navigable waters of the United  
 13 States;

14 (d) service performed by an individual in the employ of  
 15 that individual's son, daughter, or spouse and service  
 16 performed by a child under the age of 21 in the employ of  
 17 the child's father or mother;

18 (e) service performed in the employ of any other state  
 19 or its political subdivisions or of the United States  
 20 government or of an instrumentality of any other state or  
 21 states or their political subdivisions or of the United  
 22 States, except that national banks organized under the  
 23 national banking law shall not be entitled to exemption  
 24 under this subsection and shall be subject to this chapter  
 25 the same as state banks, provided that such service is



1 excluded from employment as defined in the Federal  
 2 Unemployment Tax Act by section 3306(c)(7) of that act;

3 (f) service with respect to which unemployment  
 4 insurance is payable under an unemployment insurance system  
 5 established by an act of congress, provided that the  
 6 department must enter into agreements with the proper  
 7 agencies under such act of congress, which agreements shall  
 8 become effective in the manner prescribed in the Montana  
 9 Administrative Procedure Act for the adoption of rules, to  
 10 provide reciprocal treatment to individuals who have, after  
 11 acquiring potential rights to benefits under this chapter,  
 12 acquired rights to unemployment insurance under such act of  
 13 congress or who have, after acquiring potential rights to  
 14 unemployment insurance under such act of congress, acquired  
 15 rights to benefits under this chapter;

16 (g) services performed in the delivery and distribution  
 17 of newspapers or shopping news from house to house and  
 18 business establishments by an individual under the age of 18  
 19 years, but not including the delivery or distribution to any  
 20 point or points for subsequent delivery or distribution;

21 (h) services performed by real estate, securities, and  
 22 insurance salespeople paid solely by commissions and without  
 23 guarantee of minimum earnings;

24 (i) service performed in the employ of a school,  
 25 college, or university if such service is performed by a

1 student who is enrolled and is regularly attending classes  
 2 at such school, college, or university or by the spouse of  
 3 such a student if such spouse is advised, at the time such  
 4 spouse commences to perform such service, that the  
 5 employment of such spouse to perform such service is  
 6 provided under a program to provide financial assistance to  
 7 such student by such school, college, or university and such  
 8 employment will not be covered by any program of  
 9 unemployment insurance;

10 (j) service performed by an individual who is enrolled  
 11 at a nonprofit or public educational institution, which  
 12 normally maintains a regular faculty and curriculum and  
 13 normally has a regularly organized body of students in  
 14 attendance at the place where its educational activities are  
 15 carried on, as a student in a full-time program taken for  
 16 credit at such institution which combines academic  
 17 instruction with work experience if such service is an  
 18 integral part of such program and such institution has so  
 19 certified to the employer, except that this subsection shall  
 20 not apply to service performed in a program established for  
 21 or on behalf of an employer or group of employers;

22 (k) service performed in the employ of a hospital if  
 23 such service is performed by a patient of the hospital;

24 (l) services performed by a cosmetologist who is  
 25 licensed under Title 37, chapter 31, or a barber who is

1 licensed under Title 37, chapter 30, and who has  
 2 acknowledged in writing that he is not covered by  
 3 unemployment insurance and workers' compensation and who  
 4 contracts with a cosmetological establishment as defined in  
 5 37-31-101 or a barbershop as defined in 37-30-101, which  
 6 contract shall show the cosmetologist or barber is free from  
 7 all control and direction of the owner in the contract and  
 8 in fact; receives payment for services from his or her  
 9 individual clientele; leases, rents, or furnishes all of his  
 10 or her own equipment, skills, or knowledge; and whose  
 11 contract gives rise to an action for breach of contract in  
 12 the event of contract termination (the existence of a single  
 13 license for the cosmetological establishment or barbershop  
 14 shall not be construed as a lack of freedom from control or  
 15 direction under this subsection);

16 (m) casual labor not in the course of an employer's  
 17 trade or business performed in any calendar quarter, unless  
 18 the cash remuneration paid for such service is \$50 or more  
 19 and such service is performed by an individual who is  
 20 regularly employed by such employer to perform such service.  
 21 "Regularly employed" means the services are performed during  
 22 at least 24 days in the same quarter.

23 (n) services performed for the installation of floor  
 24 coverings if the installer:

25 (i) bids or negotiates a contract price based upon work

1 performed by the yard or by the job;  
 2 (ii) is paid upon completion of an agreed upon portion  
 3 of the job or after the job is completed;  
 4 (iii) may perform services for anyone without  
 5 limitation;  
 6 (iv) may accept or reject any job;  
 7 (v) furnishes substantially all tools and equipment  
 8 necessary to provide the services; and  
 9 (vi) works under a written contract that:  
 10 (A) gives rise to a breach of contract action if the  
 11 installer or any other party fails to perform the contract  
 12 obligations;  
 13 (B) states the installer is not covered by unemployment  
 14 insurance; and  
 15 (C) requires the installer to provide a current  
 16 workers' compensation policy or to obtain an exemption from  
 17 workers' compensation requirements.  
 18 (2) "Employment" does not include elected public  
 19 officials.  
 20 (3) For the purposes of 39-51-203(6), the term  
 21 "employment" does not apply to service performed:  
 22 (a) in the employ of a church or convention or  
 23 association of churches or an organization which is operated  
 24 primarily for religious purposes and which is operated,  
 25 supervised, controlled, or principally supported by a church

1 or convention or association of churches;

2 (b) by a duly ordained, commissioned, or licensed  
3 minister of a church in the exercise of the church's  
4 ministry or by a member of a religious order in the exercise  
5 of duties required by such order;

6 (c) in a facility conducted for the purpose of carrying  
7 out a program of rehabilitation for individuals whose  
8 earning capacity is impaired by age or physical or mental  
9 deficiency or injury or providing remunerative work for  
10 individuals who, because of their impaired physical or  
11 mental capacity, cannot be readily absorbed in the  
12 competitive labor market by an individual receiving such  
13 rehabilitation or remunerative work;

14 (d) as part of an unemployment work-relief or  
15 work-training program assisted or financed in whole or in  
16 part by a federal agency or any agency of a state or  
17 political subdivision thereof by an individual receiving  
18 such work relief or work training; or

19 (e) for a state prison or other state correctional or  
20 custodial institution by an inmate of that institution."

21 **Section 5.** Section 39-51-206, MCA, is amended to read:

22 "39-51-206. Agricultural labor -- who treated as  
23 employer of member of a crew furnished by a crew leader. (1)  
24 For the purposes of 39-51-203, any individual who is a  
25 member of a crew furnished by a crew leader to perform

1 service in agricultural labor for any other person shall be  
2 treated as an employee of such crew leader if:

3 (a) such crew leader holds a valid certificate of  
4 registration under the Migrant and Seasonal Agricultural  
5 Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);

6 or

7 (b) (i) substantially all the members of such crew  
8 operate or maintain tractors, mechanized harvesting or  
9 cropdusting equipment, or any other mechanized equipment  
10 which is provided by such crew leader; and

11 (ii) such individual is not an employee of such other  
12 person ~~within-the-meaning-of-39-51-202(1), 39-51-203(8), or~~  
13 ~~39-51-203(9)~~ for whom services in agricultural labor are  
14 performed.

15 (2) In the case of any individual who is furnished by a  
16 crew leader to perform service in agricultural labor for any  
17 other person and who is not treated as an employee of such  
18 crew leader under subsection (1):

19 (a) such other person and not the crew leader shall be  
20 treated as the employer of such individual; and

21 (b) such other person shall be treated as having paid  
22 cash remuneration to such individual in an amount equal to  
23 the amount of cash remuneration paid to such individual by  
24 the crew leader, either on his own behalf or on behalf of  
25 such other person, for the service in agricultural labor

1 performed for such other person.

2 (3) The term "crew leader" means an individual who:

3 (a) furnishes individuals to perform service in  
4 agricultural labor for any other person;

5 (b) pays, either on his own behalf or on behalf of such  
6 other person, the individuals so furnished by him for the  
7 service in agricultural labor performed by them; and

8 (c) has not entered into a written agreement with such  
9 other person under which such individual is designated as an  
10 employee of such other person."

11 **Section 6.** Section 39-51-602, MCA, is amended to read:

12 **"39-51-602. Method to be used by department in keeping**  
13 **wage records.** Wage records kept by the department for the  
14 purposes of this chapter shall must be kept on the basis of  
15 wages paid, except that for the purposes of determining  
16 benefit eligibility and the amount and duration of benefits  
17 payable, wages, including lump-sum payments of accrued  
18 wages, must be assigned to periods of time as determined in  
19 accordance with rules adopted by the department."

20 **Section 7.** Section 39-51-603, MCA, is amended to read:

21 **"39-51-603. Employing unit to keep records and make**  
22 **reports.** (1) Each employing unit shall keep true and  
23 accurate work records containing such information as the  
24 department may prescribe. Those records shall be open to  
25 inspection and audit and shall be subject to being copied by

1 the department or its authorized representative at any  
2 reasonable time and as often as may be necessary.

3 (2) The department and the chairman of any appeal  
4 tribunal may require from any employing unit any sworn or  
5 unsworn reports with respect to persons employed by it which  
6 the department considers necessary to the effective  
7 administration of this chapter.

8 (3) Information thus obtained or obtained from any  
9 individual under this chapter shall, except to the  
10 individual claimant to the extent necessary for the proper  
11 presentation of a claim, be held confidential and shall not  
12 be published or be open to public inspection, except to  
13 public employees in the performance of their public duties,  
14 in any manner revealing the individual's or employing unit's  
15 identity, but any claimant or his legal representative at a  
16 hearing before the board or appeal tribunal shall be  
17 supplied with information from the records to the extent  
18 necessary for the proper presentation of his claim.

19 (4) Any employee or member of the department who  
20 violates any provision of this section shall be fined not  
21 less than \$20 or more than \$200 or imprisoned for not longer  
22 than 90 days or both."

23 **Section 8.** Section 39-51-1101, MCA, is amended to read:

24 **"39-51-1101. Commencement and termination of coverage**  
25 **under chapter.** (1) Any employing unit which is or becomes an

1 employer subject to this chapter within any calendar year  
2 shall be subject to this chapter during the whole of such  
3 calendar year, except that this subsection shall not apply  
4 to an employing unit electing coverage as provided for in  
5 39-51-1102.

6 (2) Except as otherwise provided in 39-51-1102, an  
7 employing unit shall cease to be an employer subject to this  
8 chapter only as of January 1 of any calendar year only if it  
9 files with the department prior to the last day of February  
10 of such year a written application for termination of  
11 coverage and the department finds that the total wages  
12 payable for employment by said employer in the preceding  
13 calendar year did not equal or exceed \$17000 the amount of  
14 wages required under 39-51-202 to be considered an employer  
15 subject to this chapter. For the purpose of this subsection,  
16 the two or more employing units mentioned in ~~subsection-(2)~~  
17 ~~or-(3)-of 39-51-202(4) or (5)~~ shall be treated as a single  
18 employing unit."

19 **Section 9.** Section 39-51-1104, MCA, is amended to read:

20 "39-51-1104. Duty and liability of contractor and  
21 subcontractor, respectively, in regard to contributions  
22 taxes, penalties, and interest owed by subcontractor. (1)  
23 Any contractor who is or becomes an employer under the  
24 provisions of this chapter who contracts with any  
25 subcontractor who also is or becomes an employer under the

1 provisions of this chapter shall withhold sufficient money  
2 on the contract to guarantee that all contributions taxes,  
3 penalties, and interest are paid upon completion of the  
4 contract.

5 (2) It shall be the duty of any subcontractor who is or  
6 becomes an employer under the provisions of this chapter to  
7 furnish the contractor with a certification issued by the  
8 department, prior to final payment for the particular job,  
9 stating that said subcontractor is current and in full  
10 compliance with the provisions of this chapter.

11 (3) Failure to comply with the provisions of this  
12 section shall render the contractor directly liable for all  
13 contributions taxes, penalties, and interest due from the  
14 subcontractor on the particular job, and the administrator  
15 has all of the remedies of collection against the contractor  
16 under the provisions of this chapter as though the services  
17 in question were performed directly for the contractor."

18 **Section 10.** Section 39-51-1105, MCA, is amended to  
19 read:

20 "39-51-1105. Liability of corporate officers for  
21 contributions taxes, penalties, and interest owed by  
22 corporation. When a corporation subject to Montana corporate  
23 law has failed to file the annual corporation report with  
24 the Montana secretary of state as required by law the  
25 department shall hold the president, vice-president,

1 secretary, and treasurer jointly and severally liable for  
 2 any contributions taxes, penalties, and interest due for the  
 3 period in which the corporation is delinquent in filing the  
 4 annual corporation report. If the required annual  
 5 corporation report is made and filed after the time  
 6 specified, such officers may not, on account of prior  
 7 failure to make report, be held liable for the contributions  
 8 taxes, PENALTIES, AND INTEREST thereafter accruing."

9 **Section 11.** Section 39-51-1110, MCA, is amended to  
 10 read:

11 "39-51-1110. Refunds to employers. (1) If not later  
 12 than 3 years after the date on which any contributions taxes  
 13 or interest thereon became due or not later than 1 year from  
 14 the date on which payment was made, whichever is later, an  
 15 employer who has paid such contributions taxes or interest  
 16 thereon shall make application for an adjustment thereof in  
 17 connection with subsequent contribution tax payments or for  
 18 a refund thereof because such adjustment cannot be made and  
 19 the department shall determine that such contributions taxes  
 20 or interest or any portion thereof was erroneously  
 21 collected, the department shall allow such employer to make  
 22 an adjustment thereof, without interest, in connection with  
 23 subsequent contribution tax payments by him or, if such  
 24 adjustment cannot be made, the department shall refund said  
 25 amount, without interest, from the fund. For like cause and

1 within the same period, adjustment or refund may be so made  
 2 on the department's own initiative.

3 (2) If the department shall determine that an employer  
 4 has paid contributions taxes to this state under this  
 5 chapter when such contributions taxes should have been paid  
 6 to another state under a similar act of such other state,  
 7 transfer of such contributions taxes to such other state  
 8 shall be made upon discovery or, upon proof of payment that  
 9 such other state has been fully paid, then refund to such  
 10 employer shall be made at any time upon application without  
 11 limitation of time.

12 (3) In the event that this chapter is not certified by  
 13 the secretary of labor under section 1603 of the Internal  
 14 Revenue Code, as amended, 1939, for any year, then and in  
 15 that event refunds shall be made of all contributions taxes  
 16 required under this chapter from employers for that year."

17 **Section 12.** Section 39-51-1301, MCA is amended to read:

18 "39-51-1301. (Effective July 1, 1991) Penalty and  
 19 interest on past-due contributions taxes. (1) Contributions  
 20 Taxes unpaid on the date on which they are due and payable,  
 21 as provided by subsections (1) and (2) of 39-51-1103 and  
 22 39-51-1125, that are paid by the end of the month following  
 23 the due date shall be subject to a penalty assessment of \$10  
 24 or 10% of the contribution tax due, whichever is greater. If  
 25 the contributions taxes are not paid by the end of the month

1 following the due date, the employer shall be subject to a  
 2 penalty assessment of \$15 or 15% of the contributions taxes  
 3 due, whichever is greater. All past-due contributions taxes  
 4 shall bear interest at the rate of 18% a year, to be  
 5 prorated on a daily basis.

6 (2) A penalty of \$40 shall be assessed whenever, as the  
 7 result of a willful refusal of an employer to furnish wage  
 8 information or pay contributions taxes on time, the  
 9 department issues a subpoena to obtain wage information or  
 10 makes a summary or jeopardy assessment pursuant to  
 11 39-51-1302.

12 (3) Interest and penalties collected pursuant to this  
 13 section shall be paid into the unemployment insurance trust  
 14 fund.

15 (4) When failure to pay contributions taxes on time was  
 16 not caused by willful intent of the employer, the department  
 17 may abate the penalty and interest.

18 (5) All money accruing to the unemployment insurance  
 19 trust fund from interest and penalties collected on past-due  
 20 contributions taxes must be used solely for the payment of  
 21 unemployment insurance benefits and may not be used for any  
 22 other purpose."

23 **Section 13.** Section 39-51-1302, MCA, is amended to  
 24 read:

25 "39-51-1302. Summary or jeopardy assessment of unpaid

1 contributions taxes. (1) If any employer fails to file a  
 2 report or return as required under this chapter or the  
 3 regulations of the department adopted thereunder within the  
 4 time specified or if the employer's records are inaccurate  
 5 or are incomplete when an employer has already filed a  
 6 quarterly wage report for the period in question, the  
 7 department may make a summary or jeopardy assessment of the  
 8 amount due by making up such report and determining the  
 9 amount of contributions taxes due and owing to the fund upon  
 10 the basis of such information as the department may be able  
 11 to obtain, and thereupon the same shall be collected the  
 12 same as other reports and contributions taxes due, with  
 13 penalty and interest as provided in this chapter.

14 (2) Upon making such summary or jeopardy assessment,  
 15 the department shall immediately notify the employer in  
 16 writing by personal service or by certified ~~or~~ registered  
 17 mail in the usual course at the last known principal place  
 18 of business operated by the employer. Such assessment shall  
 19 be final unless the employer shall protest such assessment  
 20 in writing within 15 days after service of the notice or,  
 21 within the same period of time, the employer shall file a  
 22 correct, signed, and sworn report and statement as provided  
 23 by the chapter and the regulations of the department.

24 (3) Upon written protest being filed as above set  
 25 forth, a day certain for the hearing thereof shall be fixed

1 by the department and notice thereof mailed to the employer.  
 2 At such hearing, the facts ascertained by the department  
 3 shall be conclusive and the department may upon the basis of  
 4 such facts ascertained assess the amount due, modify, set  
 5 aside, or revise the prior assessment and require the  
 6 employer to pay the amount due with penalty and interest as  
 7 provided for in this chapter. A copy of the decision of the  
 8 department and the assessment of the amount due shall be  
 9 mailed to the employer at his last known principal place of  
 10 business and thereupon become final."

11 **Section 14.** Section 39-51-1303, MCA, is amended to  
 12 read:

13 "**39-51-1303. Collection of unpaid contributions taxes**  
 14 **by civil action.** (1) If, after due notice, any employer  
 15 defaults in any payment of ~~contributions~~ taxes, penalties,  
 16 or interest thereon, the department may at its discretion  
 17 initiate a civil action in the name of the Montana  
 18 department of labor and industry to collect the amount due,  
 19 and the employer adjudged in default shall pay the costs of  
 20 such action.

21 (2) An action for the collection of ~~contributions~~ taxes  
 22 due must be brought within 5 years after the due date of  
 23 such ~~contributions~~ taxes or it is barred.

24 (3) The department may pursue its remedy under either  
 25 this section or 39-51-1304, or both."

1 **Section 15.** Section 39-51-1304, MCA, is amended to  
 2 read:

3 "**39-51-1304. Lien for payment of unpaid contributions**  
 4 **and-assessments taxes -- levy and execution.** (1) Unpaid  
 5 ~~contributions--and--assessments--under--39-51-404(4)~~ taxes,  
 6 including penalties and interest assessed thereon, have the  
 7 effect of a judgment against the employer, arising at the  
 8 time such payments are due. The department may issue a  
 9 certificate setting forth the amount of payments due and  
 10 directing the clerk of the district court of any county of  
 11 the state to enter the certificate as a judgment in the  
 12 docket pursuant to 25-9-301. From the time the judgment is  
 13 docketed, it becomes a lien upon all real and personal  
 14 property of the employer. ~~From--the-time-the-judgment-is~~  
 15 ~~filed-with-the-secretary-of-state-or-a-registrar-of-personal~~  
 16 ~~property-specifically-describing-the-personal--property--it~~  
 17 ~~becomes-a-lien-upon-personal-property-of-the-employer.~~ After  
 18 the due process requirements of 39-51-1109 and 39-51-2403  
 19 have been satisfied, the department may enforce the judgment  
 20 pursuant to Title 25, chapter 13, except that the department  
 21 may enforce the judgment at any time within 10 years of the  
 22 creation of the lien.

23 (2) The lien provided for in subsection (1) is not  
 24 valid against any third party owning an interest in real or  
 25 personal property against which the judgment is enforced if:



1 (a) the third party's interest is recorded prior to the  
2 entrance of the certificate as a judgment; and

3 (b) the third party receives from the most recent  
4 grantor of the interest a signed affidavit stating that all  
5 ~~contributions,--assessments~~ taxes, penalties, and interest  
6 due from the grantor have been paid.

7 (3) A grantor who signs and delivers an affidavit is  
8 subject to the penalties imposed by 39-51-3204 if any part  
9 of it is untrue. Notwithstanding the provisions of  
10 39-51-3204, the department may proceed against the employer  
11 under this section or 39-51-1303, or both, to collect the  
12 delinquent ~~contributions,--assessments~~ taxes, penalties, and  
13 interest.

14 (4) The lien provided for in subsection (1) must be  
15 released upon payment in full of the unpaid taxes,  
16 penalties, and accumulated interest. The department may  
17 release or may partially release the lien upon partial  
18 payment or whenever the department determines that the  
19 release or partial release of the lien will facilitate the  
20 collection of unpaid taxes, penalties, or interest. The  
21 department may release the lien if it determines that the  
22 lien is unenforceable."

23 **Section 16.** Section 39-51-1305, is amended to read:

24 "39-51-1305. Priority of payment of contributions taxes  
25 due under legal dissolutions or distributions. In the event

1 of any distribution of an employer's assets pursuant to an  
2 order of any court under the laws of this state, including  
3 any receivership, assignment for benefit of creditors,  
4 adjudicated insolvency, composition, or similar proceeding,  
5 contributions taxes then or thereafter due shall be paid in  
6 full prior to all other claims, except taxes and claims for  
7 wages of not more than \$250 to each claimant earned within 6  
8 months of the commencement of the proceeding."

9 **Section 17.** Section 39-51-1306, MCA, is amended to  
10 read:

11 "39-51-1306. Reciprocity with other states for  
12 collection of unpaid contributions taxes. (1) The courts of  
13 this state shall recognize and enforce liabilities for  
14 unemployment contributions taxes and any other special  
15 assessments imposed by other states which extend a like  
16 comity to this state.

17 (2) The department is hereby empowered to sue in the  
18 courts of any other jurisdiction which extends such comity  
19 to collect unemployment contributions taxes, penalties, and  
20 interest due this state. The officials of other states which  
21 by statute or otherwise extend a like comity to this state  
22 may sue in the courts of this state to collect for such  
23 contributions taxes and any other special assessments and  
24 interest and penalties, if any, due such state. In any such  
25 case the administrator may through his attorney or attorneys

1 institute and conduct such suit for such other state.

2 (3) Venue of such proceedings shall be the same as for  
3 actions to collect delinquent contributions taxes,  
4 penalties, and interest due under this chapter.

5 (4) A certificate by the secretary of any such state  
6 under the great seal of such state attesting the authority  
7 of such official or officials to collect unemployment  
8 insurance contributions taxes and other special assessments,  
9 penalties, and interest shall be conclusive evidence of such  
10 authority."

11 **Section 18.** Section 39-51-2110, MCA, is amended to  
12 read:

13 "**39-51-2110. Payment of benefits to aliens.** (1)  
14 ~~Effective--January--1,--1978,--benefits~~ Benefits shall not be  
15 paid payable on the basis of services performed by an alien  
16 unless such the alien is an individual who ~~has-been~~ was  
17 lawfully admitted for permanent residence at the time the  
18 services were performed, was lawfully present for the  
19 purposes of performing the services, or otherwise-is was  
20 permanently residing in the United States under color of  
21 law, at the time the services were performed, including an  
22 alien who is was lawfully present in the United States as a  
23 result of the application of the provisions of section  
24 203(a)(7) or section 212(d)(5) of the Immigration and  
25 Nationality Act.

1 (2) Any data or information required of individuals  
2 applying for benefits to determine whether benefits are not  
3 payable to them because of their alien status shall be  
4 uniformly required from all applicants for benefits.

5 (3) In the case of an individual whose application for  
6 benefits would otherwise be approved, no determination that  
7 benefits to such individual are not payable because of his  
8 alien status shall be made except upon a preponderance of  
9 the evidence."

10 ~~Section-19---Section--39-51-2509,--MCA,--is--amended--to~~  
11 ~~read:~~

12 ~~"39-51-2509,--Weekly--extended--benefit--amount, (1) The~~  
13 ~~weekly-extended-benefit-amount-payable-to-an-individual--for~~  
14 ~~a-week-of-total-unemployment-in-his-eligibility-period--shall~~  
15 ~~be--an--amount-equal-to-the-weekly-benefit-amount,--except-as~~  
16 ~~provided-in-subsection-(2);~~

17 ~~(2) --For-any-week--during--a--period--in--which--federal~~  
18 ~~payments---to---this---state---under---section--204--of--the~~  
19 ~~Federal-State-Extended-Unemployment-Compensation-Act-of-1970~~  
20 ~~are-reduced-under-an-order-issued-under-section-252-of--the~~  
21 ~~Balanced--Budget--and--Emergency-Deficit-Control-Act-of-1985,~~  
22 ~~the-weekly-extended-benefit-amount-payable-to-an--individual~~  
23 ~~for--a--week-of-total-unemployment-in-his-eligibility-period~~  
24 ~~must-be-reduced-by-a-percentage-equivalent-to-the-percentage~~  
25 ~~of-the-reduction-in-the-federal-payment. The-reduced--weekly~~

1 ~~extended benefit amount, if not a full dollar amount, must~~  
2 ~~be rounded to the nearest lower full dollar amount, payable~~  
3 ~~to him during his applicable benefit year."~~

4 Section 204--Section--39-51-25107--MCA7--is--amended--to  
5 read:

6 "39-51-25107--Total--extended--benefit--amount--The (1)  
7 ~~Except as provided in subsection (2), the total extended~~  
8 ~~benefit amount payable to any eligible individual with~~  
9 ~~respect to his applicable benefit year shall be the least of~~  
10 ~~the following amounts:~~

11 (1)(a) ~~50% of the total amount of regular benefits~~  
12 ~~which were payable to him under this chapter in his~~  
13 ~~applicable benefit year;~~

14 (2)(b) ~~13 times his weekly benefit amount which was~~  
15 ~~payable to him under this chapter for a week of total~~  
16 ~~unemployment in the applicable benefit year.~~

17 (2) ~~During any fiscal year in which federal payments to~~  
18 ~~this state under section 204 of the Federal State Extended~~  
19 ~~Unemployment Compensation Act of 1970 are reduced under an~~  
20 ~~order issued under section 252 of the Balanced Budget and~~  
21 ~~Emergency Deficit Control Act of 1985, the total extended~~  
22 ~~benefit amount payable to an individual with respect to his~~  
23 ~~applicable benefit year must be reduced by an amount equal~~  
24 ~~to the aggregate of the reductions under 39-51-2509 in the~~  
25 ~~weekly amounts paid to the individual."~~

1 Section 19. Section 39-51-2602, MCA, is amended to  
2 read:

3 "39-51-2602. Approved trade-readjustment training under  
4 federal programs. (1) Notwithstanding any other provisions  
5 of this chapter, no otherwise eligible individual may be  
6 denied benefits for any week:

7 (a) because he is of participation in training approved  
8 under Section 236(a)(1) of the federal Trade Act of 1974; or  
9 under Title III of the federal Job Training Partnership Act;

10 (b) in which he is because of participation in such  
11 approved training described in subsection (1)(a) by reason  
12 of leaving work to enter such the training if the work left  
13 is not suitable employment; or

14 (c) because of the application to any such week in  
15 training of provisions in this chapter or any federal  
16 unemployment insurance law administered by this agency,  
17 relating to availability for work, active search for work,  
18 or refusal to accept work.

19 (2) For purposes of this section, "suitable employment"  
20 means work of a substantially equal or higher skill level  
21 than the individual's past adversely affected employment, as  
22 defined for purposes of the federal Trade Act of 1974 and  
23 the federal Job Training Partnership Act, and for which the  
24 wages are not less than 80% of the individual's average  
25 weekly wage as determined for the purposes of the federal

1 Trade Act of 1974 and the federal Job Training Partnership  
 2 Act."

3 **Section 20.** Section 39-51-1121, MCA, is amended to  
 4 read:

5 "39-51-1121. Definitions. As used in this part and part  
 6 12, the following definitions apply:

7 (1) "Computation date" means the reporting period  
 8 ending September 30 preceding the calendar year for which a  
 9 covered employer's contribution rate is effective.

10 (2) "Cutoff date" means ~~December 31~~ November 30 OCTOBER  
 11 31 immediately following the computation date. The  
 12 department may extend the cutoff date in meritorious cases.

13 (3) "Deficit employer" means an employer who is subject  
 14 under this chapter and who has established a record of  
 15 accumulated benefits charged to the employer's account in  
 16 excess of the employer's accumulated contributions paid as  
 17 of the cutoff date.

18 ~~(4) "Department" means the department of labor and~~  
 19 ~~industry.~~

20 ~~(5)~~ (4) "Eligible employer" means an employer who has  
 21 been subject under this chapter for the 3 fiscal years  
 22 immediately preceding the computation date and who has:

23 ~~(a) filed all contribution reports prescribed by the~~  
 24 ~~department;~~

25 ~~(b) paid all contributions and all assessments under~~

1 ~~39-51-404(4) and penalties and interest thereon;~~

2 ~~(c)~~ (a) established a record of accumulated  
 3 contributions in excess of benefits charged to the  
 4 employer's account; and

5 ~~(d)~~ (b) paid wages in at least 1 of the 8 calendar  
 6 quarters preceding the computation date.

7 ~~(6)~~ (5) "Fiscal year" means the four consecutive  
 8 calendar quarters ending on September 30.

9 ~~(7)~~ (6) "Governmental entities" means the state or any  
 10 political subdivision of the state or an instrumentality of  
 11 the state or a political subdivision, including any  
 12 employing unit funded directly by tax levies.

13 (7) "New employer" means an employer who:

14 (a) has not been subject to the provisions of this  
 15 chapter for the 3 fiscal years immediately preceding the  
 16 computation date; and

17 (b) has established a record of accumulated  
 18 contributions in excess of benefits charged to the  
 19 employer's account.

20 (8) "Taxable wage base" means the amount of wages  
 21 subject to contributions and to assessments under  
 22 39-51-404(4) for each calendar year. Payment of  
 23 contributions and of assessments under 39-51-404(4) may  
 24 apply only to wages paid up to and including the amount  
 25 specified in 39-51-1108.

1 ~~(9) -- "Unrated employer" means an employer who is subject~~  
2 ~~under this chapter and who does not meet all the criteria of~~  
3 ~~an eligible or a deficit employer."~~

4 **Section 21.** Section 39-51-1125, MCA, is amended to  
5 read:

6 "39-51-1125. Computation of payments in lieu of  
7 contributions. (1) After June 30, 1987, qualified employers  
8 electing to make payments in lieu of contributions shall pay  
9 into the fund an amount equivalent to the full amount of  
10 regular benefits plus the state's share of extended benefits  
11 paid to individuals based on wages paid by the employing  
12 unit. After December 31, 1978, governmental entities shall  
13 pay the full amount of extended benefits.

14 (2) If benefits paid an individual are based on wages  
15 paid by both the employer and one or more other employers,  
16 the amount payable by any one employer to the fund bears the  
17 same ratio to total benefits paid to the individual as the  
18 base period wages paid to the individual by such employer  
19 bear to the total amount of base period wages paid to the  
20 individual by all the individual's base period employers.

21 (3) If the base period wages of an individual include  
22 wages from more than one such employer, the amount to be  
23 paid into the fund with respect to the benefits paid to the  
24 individual shall be prorated among the liable employers in  
25 proportion to the wages paid to the individual by each such

1 employer during the base period.

2 (4) The amount of payment required from employers shall  
3 be ascertained by the department monthly and becomes due and  
4 payable by the employer quarterly as directed in this  
5 chapter. Penalty and interest for delinquency shall be  
6 assessed such employers as specified in 39-51-1301.

7 (5) A payment may not be required under this section  
8 with respect to benefits paid to an individual if the  
9 qualified employer continues to provide employment to the  
10 individual with no reduction in hours or wages."

11 **Section 22.** Section 39-51-1212, MCA, is amended to  
12 read:

13 "39-51-1212. Experience rating for governmental  
14 entities. (1) Governmental entities newly covered under this  
15 chapter after December 31, 1974, shall make payments for the  
16 period prior to July 1, 1977, equal to 0.4% of total wages  
17 paid employees for services in employment during the  
18 calendar quarter and for the period after July 1, 1977,  
19 shall make payments at the median rate.

20 (2) The rates of governmental entities who have  
21 accumulated experience rating credits shall be adjusted  
22 annually as follows with each governmental entity assigned a  
23 rate based upon:

24 (a) its benefit cost experience, to be arrived at by  
25 dividing the total sum of benefits charged to the employer's

1 account for all past periods which are completed  
2 transactions by December 31 by total wages from date of  
3 subjectivity of the employing unit through December 31; and

4 (b) the benefit cost for all past years of governmental  
5 entities electing to pay contributions compared with total  
6 payrolls reported for all past years by these governmental  
7 entities used as a median, with the rates so fixed using the  
8 median that the rates will, when applied to the total annual  
9 payroll for subject governmental entities, yield total paid  
10 contributions equaling approximately the total benefit  
11 costs.

12 (3) New governmental entities electing to pay  
13 contributions shall be assigned the median rate for the year  
14 in which they become subject.

15 (4) At no time may the minimum rate be less than 0.1%  
16 or the maximum rate be greater than 1.5%. The rates are to  
17 be graduated at one-tenth intervals.

18 (5) In the event benefit charges exceed contributions  
19 paid in the last 2 completed fiscal years, governmental  
20 entities' rates will be adjusted by increasing all rates to  
21 the next higher schedule.

22 (6) The computed rate is effective July 1 of each year.

23 (7) Governmental entities must be charged for their  
24 share of the total benefits paid to a claimant if the  
25 governmental entity contributed wages during the claimant's

1 base period. The benefit charged must be based on the  
2 percentage of wages paid by the governmental entity as  
3 compared to the total wages paid by all employers in the  
4 claimant's base period.

5 (8) A payment may not be required under this section  
6 with respect to benefits paid to an individual if the  
7 governmental employer continues to provide employment to the  
8 individual with no reduction in hours or wages."

9 **Section 23.** Section 39-51-1213, MCA, is amended to  
10 read:

11 "39-51-1213. Classification of employers for experience  
12 rating purposes. (1) The department shall for each calendar  
13 year classify employers in accordance with their actual  
14 experience in the payment of contributions and with respect  
15 to benefits charged against their accounts, with  
16 contribution rates reflecting benefit experience. Each  
17 employer's rate for a calendar year shall be determined on  
18 the basis of the employer's record as of October 1 of the  
19 preceding calendar year.

20 (2) In making the classification, each eligible and  
21 deficit employer's contribution rate is determined in the  
22 manner set forth below:

23 (a) Each employer is given an "experience factor" which  
24 is contributions paid since October 1, 1981, minus benefits  
25 charged on each employer's account since October 1, 1981,

1 divided by the employer's average annual taxable payroll  
 2 rounded to the next lower dollar amount for the 3 fiscal  
 3 years immediately preceding the computation date. The  
 4 computation of the "experience factor" shall be to six  
 5 decimal places.

6 (b) Schedules shall be prepared listing all eligible  
 7 and deficit employers in inverse numerical order of their  
 8 experience factors. There shall be listed on such schedules  
 9 for each employer in addition to the experience factor:

10 (i) the amount of the employer's taxable payroll for  
 11 the fiscal year ending on the computation date; and

12 (ii) the cumulative total consisting of the sum of the  
 13 employer's taxable payroll for the fiscal year ending on the  
 14 computation date and the corresponding taxable payrolls for  
 15 all other employers preceding that employer on the  
 16 schedules.

17 (3) The cumulative taxable payroll amounts listed on  
 18 the schedules provided for in 39-51-1218 shall be segregated  
 19 into groups that will yield approximately the average tax  
 20 rate according to the tax schedule assigned for that  
 21 particular taxable year. Each group shall be identified by  
 22 the rate class number listed in the table which represents  
 23 the percentage limits of each group. Each employer on the  
 24 schedules is assigned that contribution rate opposite that  
 25 employer's rate class for the tax schedule in effect for the

1 taxable year.

2 (4) (a) If the grouping of rate classes requires the  
 3 inclusion of exactly one-half of an employer's taxable  
 4 payroll, the employer is assigned the lower of the two rates  
 5 designated for the two classes in which the halves of that  
 6 employer's taxable payroll are so required.

7 (b) If the group of rate classes requires the inclusion  
 8 of a portion other than exactly one-half of an employer's  
 9 taxable payroll, the employer is assigned the rate  
 10 designated for the class in which the greater part of that  
 11 employer's taxable payroll is so required.

12 (c) If one or more employers on the schedules have  
 13 experience factors identical to that of the last employer  
 14 included in a particular rate class, all such employers are  
 15 included in and assigned the contribution rate specified for  
 16 such class, notwithstanding the provisions of 39-51-1214.

17 (5) If the taxable payroll amount or the experience  
 18 factor or both such taxable payroll amount and experience  
 19 factor of any eligible or deficit employer listed on the  
 20 schedules is changed, the employer is placed in that  
 21 position on the schedules which the employer would have  
 22 occupied had that employer's taxable payroll amount or  
 23 experience factor as changed been used in determining that  
 24 employer's position in the first instance, but such change  
 25 does not affect the position or rate classification of any

1 other employer listed on the schedules and does not affect  
2 the rate determination for previous years.

3 (6) ~~Deficit--employers~~ An employer who ~~have has~~ not  
4 filed all required payroll reports or paid all ~~contributions~~  
5 taxes, penalties, and interest due by the cutoff date must  
6 be assigned the maximum contribution rate in effect for the  
7 taxable year for his classification as an eligible, deficit,  
8 or new employer."

9 **Section 24.** Section 39-51-1214, MCA, is amended to  
10 read:

11 **"39-51-1214. Benefit payments chargeable to employer**  
12 **experience rating accounts.** (1) Except for cost  
13 reimbursement, benefits paid shall be charged to the account  
14 of each of the claimant's base period employers. The benefit  
15 charged must be based on the percentage of wages paid by the  
16 employer as compared to the total wages paid by all  
17 employers in the claimant's base period.

18 (2) No charge shall be made to the account of such  
19 covered employer with respect to benefits paid under the  
20 following situations:

21 (a) if paid to a worker who terminated his services  
22 voluntarily without good cause attributable to such covered  
23 employer or who had been discharged for misconduct in  
24 connection with such services;

25 (b) if paid in accordance with the extended benefit

1 program triggered by either national or state indicators; or

2 (c) if the base period employer continues to provide  
3 employment with no reduction in hours or wages; or

4 (d) if benefits are paid to claimants who are in  
5 training approved under 39-51-2307."

6 **Section 25.** Section 39-51-1217, MCA, is amended to  
7 read:

8 **"39-51-1217. Schedule of rates assigned based on trust**  
9 **fund reserve.** (1) The rate schedule for each calendar year  
10 is assigned based upon the ratio of the trust fund balance  
11 as of ~~December--31~~ November 30 prior to the rate year to  
12 total wages in covered employment for the 12-month period  
13 ending June 30 prior to the computation date.

14 (2) The ratio at the top of each tax schedule in the  
15 tax table shown in 39-51-1218 represents the minimum fund  
16 level required for a specific tax schedule to be in effect.

17 (3) Employer rates are assigned in accord with the  
18 rates provided in each schedule for eligible, ~~unrated,~~ and  
19 deficit employers, based upon their experience as defined in  
20 this section.

21 (4) For the calendar year 1990 and each year  
22 thereafter, any employer classified as ~~unrated~~ a new  
23 employer must be assigned a rate equal to the average rate  
24 of contributions paid by employers in the same major  
25 industrial classification for the calendar year preceding



1 the computation date, plus an adjustment for the difference  
 2 between the average tax rate assigned for the previous  
 3 calendar year and the average rate in effect for the current  
 4 calendar year. At no time may an-unrated a new employer be  
 5 assigned a rate lower than 1%. The computation of the  
 6 average rate of contributions in a major industrial  
 7 classification must exclude those employer accounts that are  
 8 not eligible for the computation of an experience rating  
 9 solely by reason of insufficient experience. The department  
 10 shall develop the major industrial classifications for the  
 11 state and shall annually determine the contribution rate for  
 12 each classification."

13 **Section 26.** Section 39-51-1218, MCA, is amended to  
 14 read:

15 **"39-51-1218. Rate schedules.**

16 SCHEDULES OF CONTRIBUTION RATES -- Part I

	Sched.	Sched.	Sched.	Sched.	
	I	II	III	IV	
17					
18					
19	Minimum Ratio of				
20	Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
21	Average Tax Rate	1.4	1.6	1.8	2.0
22	Rate Class	Contribution Rates For Eligible Employers			
23	1	0.0%	0.1%	0.3%	0.5%

1	2	0.1	0.3	0.5	0.7
2	3	0.3	0.5	0.7	0.9
3	4	0.5	0.7	0.9	1.1
4	5	0.7	0.9	1.1	1.3
5	6	0.9	1.1	1.3	1.5
6	7	1.1	1.3	1.5	1.7
7	8	1.3	1.5	1.7	1.9
8	9	1.5	1.7	1.9	2.1
9	10	1.7	1.9	2.1	2.3

10 **Contribution-Rates-For-Unrated-Employers**

11 **2.0% 2.2% 2.4% 2.6%**

12	Rate Class	Contribution Rates For Deficit Employers			
13	1	3.2%	3.4%	3.6%	3.8%
14	2	3.4	3.6	3.8	4.0
15	3	3.6	3.8	4.0	4.2
16	4	3.8	4.0	4.2	4.4
17	5	4.0	4.2	4.4	4.6
18	6	4.2	4.4	4.6	4.8
19	7	4.4	4.6	4.8	5.0
20	8	4.6	4.8	5.0	5.2
21	9	4.8	5.0	5.2	5.4
22	10	6.4	6.4	6.4	6.4

1           **SCHEDULES OF CONTRIBUTION RATES -- Part II**

2           **Sched.    Sched.    Sched.    Sched.    Sched.    Sched.**

3           **V        VI        VII       VIII       IX        X**

4           **(.0170) (.0135) (.0095) (.0075) (.0050) (.....)**

5           **2.2     2.4     2.6     2.8     3.0     3.2**

6           **Contribution Rates For Eligible Employers**

7           **0.7%    0.9%    1.1%    1.3%    1.5%    1.7%**

8           **0.9     1.1     1.3     1.5     1.7     1.9**

9           **1.1     1.3     1.5     1.7     1.9     2.1**

10           **1.3     1.5     1.7     1.9     2.1     2.3**

11           **1.5     1.7     1.9     2.1     2.3     2.5**

12           **1.7     1.9     2.1     2.3     2.5     2.7**

13           **1.9     2.1     2.3     2.5     2.7     2.9**

14           **2.1     2.3     2.5     2.7     2.9     3.1**

15           **2.3     2.5     2.7     2.9     3.1     3.3**

16           **2.5     2.7     2.9     3.1     3.3     3.5**

17           **Contribution-Rates-For-Unrated-Employers**

18           **2-0%    3-0%    3-2%    3-4%    3-6%    3-8%**

19           **Contribution Rates For Deficit Employers**

20           **4.0%    4.2%    4.4%    4.6%    4.8%    5.0%**

1           **4.2     4.4     4.6     4.8     5.0     5.2**

2           **4.4     4.6     4.8     5.0     5.2     5.4**

3           **4.6     4.8     5.0     5.2     5.4     5.6**

4           **4.8     5.0     5.2     5.4     5.6     5.8**

5           **5.0     5.2     5.4     5.6     5.8     6.0**

6           **5.2     5.4     5.6     5.8     6.0     6.2**

7           **5.4     5.6     5.8     6.0     6.2     6.4**

8           **5.6     5.8     6.0     6.2     6.4     6.4**

9           **6.4     6.4     6.4     6.4     6.4     6.4"**

10           **Section 27.** Section 39-51-3201, MCA, is amended to  
 11 read:

12           **"39-51-3201. Making false statement or representation**  
 13 **or failing to disclose material fact in order to obtain or**  
 14 **increase benefits -- administrative penalty and remedy. (1)**  
 15 **A person who makes a false statement or representation**  
 16 **knowing it to be false or knowingly fails to disclose a**  
 17 **material fact in order to obtain or increase any benefit or**  
 18 **other payment under this chapter or under an employment**  
 19 **security law of any other state or territory or the federal**  
 20 **government, either for himself or for any other person, is:**  
 21 **(1)(a) disqualified for benefits thereafter for a**  
 22 **period of not more than 52 weeks, beginning with the first**  
 23 **compensable week following the date of such determination by**  
 24 **the department, the length of time of the disqualification**  
 25 **as herein described to be determined by the department in**

1 accordance with the severity of each case; and  
 2 ~~(2)(b)~~ required to repay to the department, either  
 3 directly or as authorized by the department, by offset of  
 4 future benefits to which he may be entitled, or by a  
 5 combination of both such methods, a sum equal to the amount  
 6 wrongfully received by him, plus interest-at-the-rate-of-18%  
 7 a--year--computed--from--the--time--the--false--statement-or  
 8 representation-or-the-failure-to-disclose--a--material--fact  
 9 occurred,--except--that--future--benefits--may--not--be--used--to  
 10 offset-the-interest-due. THE DEPARTMENT MAY ASSESS a penalty  
 11 equivalent-to-33% NOT TO EXCEED 100% of the fraudulently  
 12 obtained benefits, except that future benefits may not be  
 13 used to offset the penalty due. However, he is not required  
 14 to repay any amount wrongfully obtained more than 5 years  
 15 prior to the date of the department's determination that he  
 16 made false statements, willful nondisclosure, or  
 17 misrepresentation.  
 18 (2) All money accruing from the penalty under  
 19 subsection (1)(b) must be deposited in the federal special  
 20 revenue account. Money deposited in that account may be  
 21 appropriated to the department to be used to detect and  
 22 collect unpaid taxes and overpayments of benefits to the  
 23 extent that federal grant revenues are inadequate for these  
 24 purposes. Money in the account not appropriated for these  
 25 purposes must be transferred by the department to the

1 unemployment insurance trust fund at the end of each fiscal  
 2 year."

3 **Section 28.** Section 39-51-3202, MCA, is amended to  
 4 read:

5 **"39-51-3202. Making false statement or representation**  
 6 **or failing to disclose material fact in order to obtain or**  
 7 **increase benefits -- criminal penalty. (1) A person who, in**  
 8 **order to obtain or increase for personal gain or for any**  
 9 **other person benefits under this chapter or under an**  
 10 **employment security law of any other state or territory or**  
 11 **the federal government, knowingly makes a false statement or**  
 12 **representation or knowingly fails to disclose a material**  
 13 **fact is guilty of a crime under 45-7-203, and the department**  
 14 **may cause criminal proceedings to be initiated against the**  
 15 **person.**

16 (2) A person will be required to repay to the  
 17 department an amount as determined by 39-51-3201~~(2)~~(1)(b).

18 (3) For purposes of this section, restitution awarded  
 19 under this section must include a sum equal to the amount  
 20 wrongfully received, plus 18%--interest--a--year, THE  
 21 DEPARTMENT MAY ASSESS a penalty equivalent--to--33% NOT TO  
 22 EXCEED 100% of the amount wrongfully received.  
 23 notwithstanding--the--provisions--of--25-9-205. All money  
 24 accruing from the penalty must be deposited in the federal  
 25 special revenue account. Money deposited in that account may

1 be appropriated to the department to be used to detect and  
 2 collect unpaid taxes and overpayments of benefits to the  
 3 extent that federal grant revenues are inadequate for these  
 4 purposes. Money in the account not appropriated for these  
 5 purposes must be transferred by the department to the  
 6 unemployment insurance trust fund at the end of each fiscal  
 7 year."

8 **Section 29:** Section 39-51-2107, MCA, is amended to  
 9 read:

10 "39-51-2107. Services for remuneration to be performed  
 11 during benefit year as condition for receiving benefits in  
 12 second benefit year -- amount required. An individual who  
 13 received benefits during a benefit year must perform  
 14 services for remuneration ~~after-the-beginning-of-that-year~~  
 15 following the initial separation from employment in the  
 16 previous benefit year as a condition for receiving benefits  
 17 in a second benefit year. ~~The--service-may-be-in-either~~  
 18 ~~covered--or--noncovered---employment.~~ The service must  
 19 constitute employment as defined in 39-51-203 and 39-51-204.  
 20 However, the individual must have earned the lesser of  
 21 ~~three-thirteenths~~ of his high quarter of his second benefit  
 22 year or 6 times his weekly benefit amount of that same  
 23 year."

24 **Section 30:** Section 39-51-2302, MCA, is amended to  
 25 read:

1 "39-51-2302. Disqualification for leaving work without  
 2 good cause. (1) An individual shall be disqualified for  
 3 benefits if he has left work without good cause attributable  
 4 to his employment.

5 (2) He may not be disqualified if the department finds  
 6 that he left his employment because of personal illness or  
 7 injury not associated with misconduct ~~or-left-his-employment~~  
 8 upon the advice of a licensed and practicing physician and,  
 9 after recovering from his illness or injury when recovery is  
 10 certified by a licensed and practicing physician, he  
 11 returned to his employer and offered his service and his  
 12 regular or comparable suitable work was not available, if so  
 13 found by the department, provided he is otherwise eligible.

14 (3) To requalify for benefits, an individual must  
 15 perform services other than self-employment for which  
 16 remuneration is received equal to or in excess of six times  
 17 his weekly benefit amount subsequent to the week in which  
 18 the act causing the disqualification occurred unless he has  
 19 been in regular attendance at an educational institution  
 20 accredited by the state of Montana for at least 3  
 21 consecutive months from the date of his enrollment."

22 ~~Section 33--Section--39-51-2303,--MCA,--is--amended--to~~  
 23 ~~read:~~

24 ~~"39-51-2303. Disqualification---for---discharge~~ of  
 25 ~~suspension~~ ~~due--to--misconduct.~~ ~~An--individual--shall--be~~

1 ~~disqualified--for--benefits--after---being---discharged or~~  
2 ~~suspended;~~

3 ~~{1}--for-misconduct-connected-with-the-individual's-work~~  
4 ~~or---affecting---the---individual's---employment--until--the~~  
5 ~~individual---has---performed---services,---other---than~~  
6 ~~self-employment,--for-which-remuneration-is-received-equal-to~~  
7 ~~or-in-excess-of-eight-times-the-individual's-weekly--benefit~~  
8 ~~amount--subsequent--to-the-week-in-which-the-act-causing-the~~  
9 ~~disqualification-occurred;~~

10 ~~{2}--for---gross---misconduct---connected---with---the~~  
11 ~~individual's--work--or-committed-on-the-employer's-premises,~~  
12 ~~as-determined-by-the-department,--for-a-period-of-52-weeks;"~~

13 **NEW SECTION. Section 31.** Repealer. Section 39-51-2308,  
14 MCA, is repealed.

15 **NEW SECTION. Section 32.** Severability. If a part of  
16 [this act] is invalid, all valid parts that are severable  
17 from the invalid part remain in effect. If a part of [this  
18 act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are  
20 severable from the invalid applications.

21 **NEW SECTION. Section 33.** Effective date. [This act] is  
22 effective July 1, 1991.

-End-

HOUSE BILL NO. 726

INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL,  
O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE  
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES";  
TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM  
THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR  
AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME  
FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO  
CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND  
INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER  
LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY  
PAYMENT OF BENEFITS TO ALIENS; ~~TO REVISE PAYMENT OF EXTENDED~~  
~~BENEFITS~~; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS  
THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO  
REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO  
PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS  
WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE  
FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN  
OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST  
BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND  
BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR  
LEAVING WORK WITHOUT GOOD CAUSE; ~~TO DISQUALIFY AN INDIVIDUAL~~

~~FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK~~  
~~DUE TO MISCONDUCT~~; TO REPEAL DISQUALIFICATION FOR BENEFITS  
BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201,  
39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602,  
39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110,  
39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214,  
39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303,  
39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110,  
39-51-2302, ~~39-51-2303~~, ~~39-51-2509~~, ~~39-51-2510~~, 39-51-2602,  
39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION  
39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-51-201, MCA, is amended to read:  
**"39-51-201. General definitions.** As used in this  
chapter, unless the context clearly requires otherwise, the  
following definitions apply:  
(1) "Annual payroll" means the total amount of wages  
paid by an employer, regardless of the time of payment, for  
employment during a calendar year.  
(2) "Base period" means the first four of the last five  
completed calendar quarters immediately preceding the first  
day of an individual's benefit year. However, in the case of  
a combined-wage claim pursuant to the arrangement approved  
by the secretary of labor of the United States, the base

1 period shall be that applicable under the unemployment law  
 2 of the paying state. For an individual who fails to meet the  
 3 qualifications of 39-51-2105 or a similar statute of another  
 4 state due to a temporary total disability as defined in  
 5 39-71-116 or a similar statute of another state or the  
 6 United States, the base period means the first four quarters  
 7 of the last five quarters preceding the disability if a  
 8 claim for unemployment benefits is filed within 24 months of  
 9 the date on which the individual's disability was incurred.

10 (3) "Benefits" means the money payments payable to an  
 11 individual, as provided in this chapter, with respect to the  
 12 individual's unemployment.

13 (4) "Benefit year", with respect to any individual,  
 14 means the 52-consecutive-week period beginning with the  
 15 first day of the calendar week in which such individual  
 16 files a valid claim for benefits, except that the benefit  
 17 year shall be 53 weeks if filing a new valid claim would  
 18 result in overlapping any quarter of the base year of a  
 19 previously filed new claim. A subsequent benefit year may  
 20 not be established until the expiration of the current  
 21 benefit year. However, in the case of a combined-wage claim  
 22 pursuant to the arrangement approved by the secretary of  
 23 labor of the United States, the base period is the period  
 24 applicable under the unemployment law of the paying state.

25 (5) "Board" means the board of labor appeals provided

1 for in Title 2, chapter 15, part 17.

2 (6) "Calendar quarter" means the period of 3  
 3 consecutive calendar months ending on March 31, June 30,  
 4 September 30, or December 31.

5 (7) "Contributions" means the money payments to the  
 6 state unemployment insurance fund required by this chapter  
 7 but does not include assessments under 39-51-404(4).

8 (8) "Department" means the department of labor and  
 9 industry provided for in Title 2, chapter 15, part 17.

10 (9) "Employing unit" means any individual or  
 11 organization, including the state government, any of its  
 12 political subdivisions or instrumentalities, any  
 13 partnership, association, trust, estate, joint-stock  
 14 company, insurance company, or corporation, whether domestic  
 15 or foreign, or the receiver, trustee in bankruptcy, trustee  
 16 or successor thereof, or the legal representative of a  
 17 deceased person which has or had in its employ one or more  
 18 individuals performing services for it within this state,  
 19 except as provided under ~~subsections--(8)--and--(9)--of~~  
 20 ~~39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals  
 21 performing services within this state for any employing unit  
 22 which maintains two or more separate establishments within  
 23 this state are considered to be employed by a single  
 24 employing unit for all the purposes of this chapter. Each  
 25 individual employed to perform or assist in performing the

1 work of any agent or employee of an employing unit is deemed  
 2 to be employed by such employing unit for the purposes of  
 3 this chapter, whether such individual was hired or paid  
 4 directly by such employing unit or by such agent or  
 5 employee, provided the employing unit has actual or  
 6 constructive knowledge of the work.

7 (10) "Employment office" means a free public employment  
 8 office or branch thereof operated by this state or  
 9 maintained as a part of a state-controlled system of public  
 10 employment offices or such other free public employment  
 11 offices operated and maintained by the United States  
 12 government or its instrumentalities as the department may  
 13 approve.

14 (11) "Fund" means the unemployment insurance fund  
 15 established by this chapter to which all contributions and  
 16 payments in lieu of contributions are required to be paid  
 17 and from which all benefits provided under this chapter  
 18 shall be paid.

19 (12) "Gross misconduct" means a criminal act, other than  
 20 a violation of a motor vehicle traffic law, for which an  
 21 individual has been convicted in a criminal court or has  
 22 admitted or conduct which demonstrates a flagrant and wanton  
 23 disregard of and for the rights or title or interest of a  
 24 fellow employee or the employer.

25 (13) "Hospital" means an institution which has been

1 licensed, certified, or approved by the state as a hospital.

2 (14) "Independent contractor" means an individual who  
 3 renders service in the course of an occupation and:

4 (a) has been and will continue to be free from control  
 5 or direction over the performance of the services, both  
 6 under his contract and in fact; and

7 (b) is engaged in an independently established trade,  
 8 occupation, profession, or business.

9 (15) (a) "Institution of higher education", for the  
 10 purposes of this part, means an educational institution  
 11 which:

12 (i) admits as regular students only individuals having  
 13 a certificate of graduation from a high school or the  
 14 recognized equivalent of such a certificate;

15 (ii) is legally authorized in this state to provide a  
 16 program of education beyond high school;

17 (iii) provides an educational program for which it  
 18 awards a bachelor's or higher degree or provides a program  
 19 which is acceptable for full credit toward such a degree, a  
 20 program of postgraduate or postdoctoral studies, or a  
 21 program of training to prepare students for gainful  
 22 employment in a recognized occupation; and

23 (iv) is a public or other nonprofit institution.

24 (b) Notwithstanding any of the foregoing provisions of  
 25 this subsection, all colleges and universities in this state



1 are institutions of higher education for purposes of this  
2 part.

3 (16) "State" includes, in addition to the states of the  
4 United States of America, the District of Columbia, Puerto  
5 Rico, the Virgin Islands, and the Dominion of Canada.

6 (17) "Taxes" means contributions and assessments  
7 required under this chapter but does not include penalties  
8 or interest for past-due or unpaid contributions or  
9 assessments.

10 ~~{17}~~(18) "Unemployment insurance administration fund"  
11 means the unemployment insurance administration fund  
12 established by this chapter from which administrative  
13 expenses under this chapter shall be paid.

14 ~~{18}~~(19) (a) "Wages" means all remuneration payable for  
15 personal services, including commissions and bonuses, the  
16 cash value of all remuneration payable in any medium other  
17 than cash, and backpay received pursuant to a dispute  
18 related to employment. The reasonable cash value of  
19 remuneration payable in any medium other than cash shall be  
20 estimated and determined in accordance with rules prescribed  
21 by the department.

22 (b) The term "wages" does not include:

23 (i) the amount of any payment made by the employer, if  
24 the payment was made under a plan established for the  
25 employees in general or for a specific class or classes of

1 employees, to or on behalf of the employee for:

2 (A) retirement;

3 (B) sickness or accident disability, ~~but in the case of~~  
4 ~~payments made by an employer directly to an employee, only~~  
5 ~~those payments made under a workers' compensation law are~~  
6 ~~excluded from "wages";~~

7 (C) medical and hospitalization expenses in connection  
8 with sickness or accident disability; or

9 (D) death;

10 (ii) remuneration paid by any county welfare office from  
11 public assistance funds for services performed at the  
12 direction and request of such county welfare office.

13 ~~{19}~~(20) "Week" means a period of 7 consecutive calendar  
14 days ending at midnight on Saturday.

15 ~~{20}~~(21) An individual's "weekly benefit amount" means  
16 the amount of benefits the individual would be entitled to  
17 receive for 1 week of total unemployment."

18 **Section 2.** Section 39-51-202, MCA, is amended to read:

19 **"39-51-202. Employer defined.** "Employer" means:

20 (1) any employing unit whose total annual payroll  
21 within either the current or preceding calendar year equals  
22 or exceeds the sum of \$1,000;

23 (2) any agricultural employing unit that pays \$20,000  
24 or more in cash to workers for agricultural labor in any  
25 quarter in the current or preceding calendar year or employs

1 10 or more workers in agricultural labor on 20 days in 20  
 2 different weeks during the current or preceding calendar  
 3 year;

4 (3) any domestic employing unit that pays \$1,000 or  
 5 more in cash for domestic service in any quarter during the  
 6 current or preceding calendar year;

7 (2)(4) any individual or employing unit which acquired  
 8 the organization, trade, or business or substantially all of  
 9 the assets thereof of another which at the time of such  
 10 acquisition was an employer subject to this chapter;

11 (3)(5) any individual or employing unit which acquired  
 12 the organization, trade, or business or substantially all  
 13 the assets thereof of another employing unit not an employer  
 14 subject to this chapter and which, if subsequent to such  
 15 acquisition it were treated as a single unit with such other  
 16 employing unit, would be an employer under subsection (1) of  
 17 this section;

18 (4)(6) any employing unit not an employer by reason of  
 19 any other subsection of this section for which, within  
 20 either the current or preceding calendar year, service is or  
 21 was performed with respect to which such employing unit is  
 22 liable for any federal tax against which credit may be taken  
 23 for contributions paid into a state unemployment fund or an  
 24 employing unit which, as a condition for approval of this  
 25 chapter for full tax credit against the tax imposed by the

1 Federal Unemployment Tax Act, is required pursuant to such  
 2 act to be an employer under this chapter;

3 (5)(7) any employing unit which, having become an  
 4 employer under subsection (1), (2)-(3) (2), (3), (4), (5),  
 5 or (4) (6) has not, under 39-51-1101, ceased to be an  
 6 employer subject to this chapter; or

7 (6)(8) for the effective period of its election  
 8 pursuant to 39-51-1102, any other employing unit which has  
 9 elected to become fully subject to this chapter."

10 **Section 3.** Section 39-51-203, MCA, is amended to read:

11 **"39-51-203. Employment defined.** (1) "Employment",  
 12 subject to other provisions of this section, means service  
 13 by an individual or by an officer of a corporation,  
 14 including service in interstate commerce, performed for  
 15 wages or under any contract of hire, written or oral,  
 16 express or implied.

17 (2) (a) The term "employment" includes an individual's  
 18 entire service performed within or both within and without  
 19 this state if:

- 20 (i) the service is localized in this state; or
- 21 (ii) the service is not localized in any state but some  
 22 of the service is performed in this state and:

23 (A) the base of operations or, if there is no base of  
 24 operations, then the place from which such service is  
 25 directed or controlled, is in this state; or

1 (B) the base of operations or place from which such  
2 service is directed or controlled is not in any state in  
3 which some part of the service is performed, but the  
4 individual's residence is in this state.

5 (b) Service is considered to be localized within a  
6 state if:

7 (i) the service is performed entirely within such  
8 state; or

9 (ii) the service is performed both within and without  
10 such state, but the service performed without such state is  
11 incidental to the individual's service within the state, for  
12 example, is temporary or transitory in nature or consists of  
13 isolated transactions.

14 (3) Service not covered under subsection (2) of this  
15 section and performed entirely without this state with  
16 respect to no part of which contributions are required and  
17 paid under an unemployment insurance law of any other state  
18 or of the federal government is considered to be employment  
19 subject to this chapter if the individual performing such  
20 services is a resident of this state and the department  
21 approves the election of the employing unit for whom such  
22 services are performed that the entire service of such  
23 individual is considered to be employment subject to this  
24 chapter.

25 (4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless  
2 and until it is shown to the satisfaction of the department  
3 that the individual is an independent contractor.

4 (5) The term "employment" includes service performed by  
5 an individual in the employ of this state or any of its  
6 instrumentalities (or in the employ of this state and one or  
7 more other states or their instrumentalities) for a hospital  
8 or institution of higher education located in this state.  
9 The term "employment" includes service performed by all  
10 individuals, including without limitations those individuals  
11 who work for the state of Montana, its universities, any of  
12 its colleges, public schools, components or units thereof,  
13 or any local government unit and one or more other states or  
14 their instrumentalities or political subdivisions whose  
15 services are compensated by salary or wages.

16 (6) The term "employment" includes service performed by  
17 an individual in the employ of a religious, charitable,  
18 scientific, literary, or educational organization.

19 (7) (a) The term "employment" includes the service of  
20 an individual who is a citizen of the United States  
21 performed outside the United States, except in Canada, in  
22 the employ of an American employer, other than service which  
23 is considered employment under the provisions of subsection  
24 (2) of this section or the parallel provisions of another  
25 state's law, if:

1 (i) the employer's principal place of business in the  
2 United States is located in this state;

3 (ii) the employer has no place of business in the United  
4 States, but:

5 (A) the employer is an individual who is a resident of  
6 this state;

7 (B) the employer is a corporation which is organized  
8 under the laws of this state; or

9 (C) the employer is a partnership or a trust and the  
10 number of the partners or trustees who are residents of this  
11 state is greater than the number who are residents of any  
12 other state; or

13 (iii) none of the criteria of sections (7)(a)(i) and  
14 (7)(a)(ii) of this subsection are met but the employer has  
15 elected coverage in this state or, the employer having  
16 failed to elect coverage in any state, the individual has  
17 filed a claim for benefits based on such service under the  
18 law of this state.

19 (b) An "American employer", for purposes of this  
20 subsection, means a person who is:

21 (i) an individual who is a resident of the United  
22 States;

23 (ii) a partnership if two-thirds or more of the partners  
24 are residents of the United States;

25 (iii) a trust if all of the trustees are residents of

1 the United States; or

2 (iv) a corporation organized under the laws of the  
3 United States or of any state.

4 ~~(8) Agricultural labor exempted under 39-51-204 is~~  
5 ~~considered employment whenever the employing unit pays~~  
6 ~~\$20,000 or more in cash to workers for agricultural labor in~~  
7 ~~any quarter in the current or preceding calendar year or~~  
8 ~~employs 10 or more workers in agricultural labor on 20 days~~  
9 ~~in 20 different weeks during the current or preceding~~  
10 ~~calendar year, if an employer, including but not limited to~~  
11 ~~an employing unit providing outfitter and guide services, is~~  
12 ~~otherwise subject to this chapter and has agricultural~~  
13 ~~employment, all employees engaged in agricultural labor must~~  
14 ~~be excluded from coverage under this chapter if the~~  
15 ~~employer:~~

16 ~~(a) in any quarter or calendar year, as applicable,~~  
17 ~~does not meet either of the tests relating to the monetary~~  
18 ~~amount or number of employees and days worked, for the~~  
19 ~~subject wages attributable to agricultural labor; and~~

20 ~~(b) keeps separate books and records to account for the~~  
21 ~~employment of persons in agricultural labor;~~

22 ~~(9) Domestic service exempted under 39-51-204(1)(b) is~~  
23 ~~considered employment whenever the employing unit pays~~  
24 ~~\$1,000 or more in cash for domestic service in any quarter~~  
25 ~~during the current or preceding calendar year, if an~~

1 employer--is--otherwise--subject--to--this--chapter--and-has  
2 domestic--service--employment,--all--employees--engaged---in  
3 domestic--service--must-be-excluded-from-coverage-under-this  
4 chapter-if-the-employer:

5 (a)--does-not-meet-the-monetary-payment-test-in-any  
6 quarter--or--calendar--year,--as-applicable,--for-the-subject  
7 wages-attributable-to-domestic-service; and

8 (b)--keeps-separate-books-and-records-to-account-for-the  
9 employment-of-persons-in-domestic-service."

10 **Section 4.** Section 39-51-204, MCA, is amended to read:

11 **"39-51-204. Exclusions from definition of employment.**

12 (1) The term "employment" does not include:

13 (a) agricultural labor, except as provided in  
14 39-51-203(8); 39-51-202(2). If an employer is otherwise  
15 subject to this chapter and has agricultural employment, all  
16 employees engaged in agricultural labor must be excluded  
17 from coverage under this chapter if the employer:

18 (i) in any quarter or calendar year, as applicable,  
19 does not meet either of the tests relating to the monetary  
20 amount or number of employees and days worked, for the  
21 subject wages attributable to agricultural labor; and

22 (ii) keeps separate books and records to account for the  
23 employment of persons in agricultural labor;

24 (b) domestic service in a private home, local college  
25 club, or local chapter of a college fraternity or sorority,

1 except as provided in 39-51-203(9); 39-51-202(3). If an  
2 employer is otherwise subject to this chapter and has  
3 domestic service employment, all employees engaged in  
4 domestic service must be excluded from coverage under this  
5 chapter if the employer:

6 (i) does not meet the monetary payment test in any  
7 quarter or calendar year, as applicable, for the subject  
8 wages attributable to domestic service; and

9 (ii) keeps separate books and records to account for the  
10 employment of persons in domestic service;

11 (c) service performed as an officer or member of the  
12 crew of a vessel on the navigable waters of the United  
13 States;

14 (d) service performed by an individual in the employ of  
15 that individual's son, daughter, or spouse and service  
16 performed by a child under the age of 21 in the employ of  
17 the child's father or mother;

18 (e) service performed in the employ of any other state  
19 or its political subdivisions or of the United States  
20 government or of an instrumentality of any other state or  
21 states or their political subdivisions or of the United  
22 States, except that national banks organized under the  
23 national banking law shall not be entitled to exemption  
24 under this subsection and shall be subject to this chapter  
25 the same as state banks, provided that such service is

1 excluded from employment as defined in the Federal  
2 Unemployment Tax Act by section 3306(c)(7) of that act;

3 (f) service with respect to which unemployment  
4 insurance is payable under an unemployment insurance system  
5 established by an act of congress, provided that the  
6 department must enter into agreements with the proper  
7 agencies under such act of congress, which agreements shall  
8 become effective in the manner prescribed in the Montana  
9 Administrative Procedure Act for the adoption of rules, to  
10 provide reciprocal treatment to individuals who have, after  
11 acquiring potential rights to benefits under this chapter,  
12 acquired rights to unemployment insurance under such act of  
13 congress or who have, after acquiring potential rights to  
14 unemployment insurance under such act of congress, acquired  
15 rights to benefits under this chapter;

16 (g) services performed in the delivery and distribution  
17 of newspapers or shopping news from house to house and  
18 business establishments by an individual under the age of 18  
19 years, but not including the delivery or distribution to any  
20 point or points for subsequent delivery or distribution;

21 (h) services performed by real estate, securities, and  
22 insurance salespeople paid solely by commissions and without  
23 guarantee of minimum earnings;

24 (i) service performed in the employ of a school,  
25 college, or university if such service is performed by a

1 student who is enrolled and is regularly attending classes  
2 at such school, college, or university or by the spouse of  
3 such a student if such spouse is advised, at the time such  
4 spouse commences to perform such service, that the  
5 employment of such spouse to perform such service is  
6 provided under a program to provide financial assistance to  
7 such student by such school, college, or university and such  
8 employment will not be covered by any program of  
9 unemployment insurance;

10 (j) service performed by an individual who is enrolled  
11 at a nonprofit or public educational institution, which  
12 normally maintains a regular faculty and curriculum and  
13 normally has a regularly organized body of students in  
14 attendance at the place where its educational activities are  
15 carried on, as a student in a full-time program taken for  
16 credit at such institution which combines academic  
17 instruction with work experience if such service is an  
18 integral part of such program and such institution has so  
19 certified to the employer, except that this subsection shall  
20 not apply to service performed in a program established for  
21 or on behalf of an employer or group of employers;

22 (k) service performed in the employ of a hospital if  
23 such service is performed by a patient of the hospital;

24 (l) services performed by a cosmetologist who is  
25 licensed under Title 37, chapter 31, or a barber who is

1 licensed under Title 37, chapter 30, and who has  
 2 acknowledged in writing that he is not covered by  
 3 unemployment insurance and workers' compensation and who  
 4 contracts with a cosmetological establishment as defined in  
 5 37-31-101 or a barbershop as defined in 37-30-101, which  
 6 contract shall show the cosmetologist or barber is free from  
 7 all control and direction of the owner in the contract and  
 8 in fact; receives payment for services from his or her  
 9 individual clientele; leases, rents, or furnishes all of his  
 10 or her own equipment, skills, or knowledge; and whose  
 11 contract gives rise to an action for breach of contract in  
 12 the event of contract termination (the existence of a single  
 13 license for the cosmetological establishment or barbershop  
 14 shall not be construed as a lack of freedom from control or  
 15 direction under this subsection);

16 (m) casual labor not in the course of an employer's  
 17 trade or business performed in any calendar quarter, unless  
 18 the cash remuneration paid for such service is \$50 or more  
 19 and such service is performed by an individual who is  
 20 regularly employed by such employer to perform such service.  
 21 "Regularly employed" means the services are performed during  
 22 at least 24 days in the same quarter.

23 (n) services performed for the installation of floor  
 24 coverings if the installer:

25 (i) bids or negotiates a contract price based upon work

1 performed by the yard or by the job;

2 (ii) is paid upon completion of an agreed upon portion  
 3 of the job or after the job is completed;

4 (iii) may perform services for anyone without  
 5 limitation;

6 (iv) may accept or reject any job;

7 (v) furnishes substantially all tools and equipment  
 8 necessary to provide the services; and

9 (vi) works under a written contract that:

10 (A) gives rise to a breach of contract action if the  
 11 installer or any other party fails to perform the contract  
 12 obligations;

13 (B) states the installer is not covered by unemployment  
 14 insurance; and

15 (C) requires the installer to provide a current  
 16 workers' compensation policy or to obtain an exemption from  
 17 workers' compensation requirements.

18 (2) "Employment" does not include elected public  
 19 officials.

20 (3) For the purposes of 39-51-203(6), the term  
 21 "employment" does not apply to service performed:

22 (a) in the employ of a church or convention or  
 23 association of churches or an organization which is operated  
 24 primarily for religious purposes and which is operated,  
 25 supervised, controlled, or principally supported by a church.

1 or convention or association of churches;

2 (b) by a duly ordained, commissioned, or licensed  
3 minister of a church in the exercise of the church's  
4 ministry or by a member of a religious order in the exercise  
5 of duties required by such order;

6 (c) in a facility conducted for the purpose of carrying  
7 out a program of rehabilitation for individuals whose  
8 earning capacity is impaired by age or physical or mental  
9 deficiency or injury or providing remunerative work for  
10 individuals who, because of their impaired physical or  
11 mental capacity, cannot be readily absorbed in the  
12 competitive labor market by an individual receiving such  
13 rehabilitation or remunerative work;

14 (d) as part of an unemployment work-relief or  
15 work-training program assisted or financed in whole or in  
16 part by a federal agency or any agency of a state or  
17 political subdivision thereof by an individual receiving  
18 such work relief or work training; or

19 (e) for a state prison or other state correctional or  
20 custodial institution by an inmate of that institution."

21 **Section 5.** Section 39-51-206, MCA, is amended to read:

22 "**39-51-206. Agricultural labor -- who treated as**  
23 **employer of member of a crew furnished by a crew leader. (1)**  
24 For the purposes of 39-51-203, any individual who is a  
25 member of a crew furnished by a crew leader to perform

1 service in agricultural labor for any other person shall be  
2 treated as an employee of such crew leader if:

3 (a) such crew leader holds a valid certificate of  
4 registration under the Migrant and Seasonal Agricultural  
5 Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);  
6 or

7 (b) (i) substantially all the members of such crew  
8 operate or maintain tractors, mechanized harvesting or  
9 cropdusting equipment, or any other mechanized equipment  
10 which is provided by such crew leader; and

11 (ii) such individual is not an employee of such other  
12 person ~~within-the-meaning-of-39-51-202(1)7-39-51-203(8)7-or~~  
13 39-51-203(9) for whom services in agricultural labor are  
14 performed.

15 (2) In the case of any individual who is furnished by a  
16 crew leader to perform service in agricultural labor for any  
17 other person and who is not treated as an employee of such  
18 crew leader under subsection (1):

19 (a) such other person and not the crew leader shall be  
20 treated as the employer of such individual; and

21 (b) such other person shall be treated as having paid  
22 cash remuneration to such individual in an amount equal to  
23 the amount of cash remuneration paid to such individual by  
24 the crew leader, either on his own behalf or on behalf of  
25 such other person, for the service in agricultural labor



1 performed for such other person.

2 (3) The term "crew leader" means an individual who:

3 (a) furnishes individuals to perform service in  
4 agricultural labor for any other person;

5 (b) pays, either on his own behalf or on behalf of such  
6 other person, the individuals so furnished by him for the  
7 service in agricultural labor performed by them; and

8 (c) has not entered into a written agreement with such  
9 other person under which such individual is designated as an  
10 employee of such other person."

11 **Section 6.** Section 39-51-602, MCA, is amended to read:

12 **"39-51-602. Method to be used by department in keeping**  
13 **wage records.** Wage records kept by the department for the  
14 purposes of this chapter ~~shall~~ must be kept on the basis of  
15 wages paid, except that for the purposes of determining  
16 benefit eligibility and the amount and duration of benefits  
17 payable, wages, including lump-sum payments of accrued  
18 wages, must be assigned to periods of time as determined in  
19 accordance with rules adopted by the department."

20 **Section 7.** Section 39-51-603, MCA, is amended to read:

21 **"39-51-603. Employing unit to keep records and make**  
22 **reports.** (1) Each employing unit shall keep true and  
23 accurate work records containing such information as the  
24 department may prescribe. Those records shall be open to  
25 inspection and audit and shall be subject to being copied by

1 the department or its authorized representative at any  
2 reasonable time and as often as may be necessary.

3 (2) The department and the chairman of any appeal  
4 tribunal may require from any employing unit any sworn or  
5 unsworn reports with respect to persons employed by it which  
6 the department considers necessary to the effective  
7 administration of this chapter.

8 (3) Information thus obtained or obtained from any  
9 individual under this chapter shall, except to the  
10 individual claimant to the extent necessary for the proper  
11 presentation of a claim, be held confidential and shall not  
12 be published or be open to public inspection, except to  
13 public employees in the performance of their public duties,  
14 in any manner revealing the individual's or employing unit's  
15 identity, but any claimant or his legal representative at a  
16 hearing before the board or appeal tribunal shall be  
17 supplied with information from the records to the extent  
18 necessary for the proper presentation of his claim.

19 (4) Any employee or member of the department who  
20 violates any provision of this section shall be fined not  
21 less than \$20 or more than \$200 or imprisoned for not longer  
22 than 90 days or both."

23 **Section 8.** Section 39-51-1101, MCA, is amended to read:

24 **"39-51-1101. Commencement and termination of coverage**  
25 **under chapter.** (1) Any employing unit which is or becomes an

1 employer subject to this chapter within any calendar year  
 2 shall be subject to this chapter during the whole of such  
 3 calendar year, except that this subsection shall not apply  
 4 to an employing unit electing coverage as provided for in  
 5 39-51-1102.

6 (2) Except as otherwise provided in 39-51-1102, an  
 7 employing unit shall cease to be an employer subject to this  
 8 chapter only as of January 1 of any calendar year only if it  
 9 files with the department prior to the last day of February  
 10 of such year a written application for termination of  
 11 coverage and the department finds that the total wages  
 12 payable for employment by said employer in the preceding  
 13 calendar year did not equal or exceed \$17,000 the amount of  
 14 wages required under 39-51-202 to be considered an employer  
 15 subject to this chapter. For the purpose of this subsection,  
 16 the two or more employing units mentioned in ~~subsection (2)~~  
 17 ~~or (3)~~ of 39-51-202(4) or (5) shall be treated as a single  
 18 employing unit."

19 **Section 9.** Section 39-51-1104, MCA, is amended to read:

20 "39-51-1104. Duty and liability of contractor and  
 21 subcontractor, respectively, in regard to contributions  
 22 taxes, penalties, and interest owed by subcontractor. (1)  
 23 Any contractor who is or becomes an employer under the  
 24 provisions of this chapter who contracts with any  
 25 subcontractor who also is or becomes an employer under the

1 provisions of this chapter shall withhold sufficient money  
 2 on the contract to guarantee that all contributions taxes,  
 3 penalties, and interest are paid upon completion of the  
 4 contract.

5 (2) It shall be the duty of any subcontractor who is or  
 6 becomes an employer under the provisions of this chapter to  
 7 furnish the contractor with a certification issued by the  
 8 department, prior to final payment for the particular job,  
 9 stating that said subcontractor is current and in full  
 10 compliance with the provisions of this chapter.

11 (3) Failure to comply with the provisions of this  
 12 section shall render the contractor directly liable for all  
 13 contributions taxes, penalties, and interest due from the  
 14 subcontractor on the particular job, and the administrator  
 15 has all of the remedies of collection against the contractor  
 16 under the provisions of this chapter as though the services  
 17 in question were performed directly for the contractor."

18 **Section 10.** Section 39-51-1105, MCA, is amended to  
 19 read:

20 "39-51-1105. Liability of corporate officers for  
 21 contributions taxes, penalties, and interest owed by  
 22 corporation. When a corporation subject to Montana corporate  
 23 law has failed to file the annual corporation report with  
 24 the Montana secretary of state as required by law the  
 25 department shall hold the president, vice-president,

1 secretary, and treasurer jointly and severally liable for  
 2 any contributions taxes, penalties, and interest due for the  
 3 period in which the corporation is delinquent in filing the  
 4 annual corporation report. If the required annual  
 5 corporation report is made and filed after the time  
 6 specified, such officers may not, on account of prior  
 7 failure to make report, be held liable for the contributions  
 8 taxes, PENALTIES, AND INTEREST thereafter accruing."

9 **Section 11.** Section 39-51-1110, MCA, is amended to  
 10 read:

11 **"39-51-1110. Refunds to employers.** (1) If not later  
 12 than 3 years after the date on which any contributions taxes  
 13 or interest thereon became due or not later than 1 year from  
 14 the date on which payment was made, whichever is later, an  
 15 employer who has paid such contributions taxes or interest  
 16 thereon shall make application for an adjustment thereof in  
 17 connection with subsequent contribution tax payments or for  
 18 a refund thereof because such adjustment cannot be made and  
 19 the department shall determine that such contributions taxes  
 20 or interest or any portion thereof was erroneously  
 21 collected, the department shall allow such employer to make  
 22 an adjustment thereof, without interest, in connection with  
 23 subsequent contribution tax payments by him or, if such  
 24 adjustment cannot be made, the department shall refund said  
 25 amount, without interest, from the fund. For like cause and

1 within the same period, adjustment or refund may be so made  
 2 on the department's own initiative.

3 (2) If the department shall determine that an employer  
 4 has paid contributions taxes to this state under this  
 5 chapter when such contributions taxes should have been paid  
 6 to another state under a similar act of such other state,  
 7 transfer of such contributions taxes to such other state  
 8 shall be made upon discovery or, upon proof of payment that  
 9 such other state has been fully paid, then refund to such  
 10 employer shall be made at any time upon application without  
 11 limitation of time.

12 (3) In the event that this chapter is not certified by  
 13 the secretary of labor under section 1603 of the Internal  
 14 Revenue Code, as amended, 1939, for any year, then and in  
 15 that event refunds shall be made of all contributions taxes  
 16 required under this chapter from employers for that year."

17 **Section 12.** Section 39-51-1301, MCA is amended to read:

18 **"39-51-1301. (Effective July 1, 1991) Penalty and**  
 19 **interest on past-due contributions taxes.** (1) Contributions  
 20 Taxes unpaid on the date on which they are due and payable,  
 21 as provided by subsections (1) and (2) of 39-51-1103 and  
 22 39-51-1125, that are paid by the end of the month following  
 23 the due date shall be subject to a penalty assessment of \$10  
 24 or 10% of the contribution tax due, whichever is greater. If  
 25 the contributions taxes are not paid by the end of the month

1 following the due date, the employer shall be subject to a  
 2 penalty assessment of \$15 or 15% of the contributions taxes  
 3 due, whichever is greater. All past-due contributions taxes  
 4 shall bear interest at the rate of 18% a year, to be  
 5 prorated on a daily basis.

6 (2) A penalty of \$40 shall be assessed whenever, as the  
 7 result of a willful refusal of an employer to furnish wage  
 8 information or pay contributions taxes on time, the  
 9 department issues a subpoena to obtain wage information or  
 10 makes a summary or jeopardy assessment pursuant to  
 11 39-51-1302.

12 (3) Interest and penalties collected pursuant to this  
 13 section shall be paid into the unemployment insurance trust  
 14 fund.

15 (4) When failure to pay contributions taxes on time was  
 16 not caused by willful intent of the employer, the department  
 17 may abate the penalty and interest.

18 (5) All money accruing to the unemployment insurance  
 19 trust fund from interest and penalties collected on past-due  
 20 contributions taxes must be used solely for the payment of  
 21 unemployment insurance benefits and may not be used for any  
 22 other purpose."

23 **Section 13.** Section 39-51-1302, MCA, is amended to  
 24 read:

25 "39-51-1302. Summary or jeopardy assessment of unpaid

1 contributions taxes. (1) If any employer fails to file a  
 2 report or return as required under this chapter or the  
 3 regulations of the department adopted thereunder within the  
 4 time specified or if the employer's records are inaccurate  
 5 or are incomplete when an employer has already filed a  
 6 quarterly wage report for the period in question, the  
 7 department may make a summary or jeopardy assessment of the  
 8 amount due by making up such report and determining the  
 9 amount of contributions taxes due and owing to the fund upon  
 10 the basis of such information as the department may be able  
 11 to obtain, and thereupon the same shall be collected the  
 12 same as other reports and contributions taxes due, with  
 13 penalty and interest as provided in this chapter.

14 (2) Upon making such summary or jeopardy assessment,  
 15 the department shall immediately notify the employer in  
 16 writing by personal service or by certified ~~or--registered~~  
 17 mail in the usual course at the last known principal place  
 18 of business operated by the employer. Such assessment shall  
 19 be final unless the employer shall protest such assessment  
 20 in writing within 15 days after service of the notice or,  
 21 within the same period of time, the employer shall file a  
 22 correct, signed, and sworn report and statement as provided  
 23 by the chapter and the regulations of the department.

24 (3) Upon written protest being filed as above set  
 25 forth, a day certain for the hearing thereof shall be fixed

1 by the department and notice thereof mailed to the employer.  
 2 At such hearing, the facts ascertained by the department  
 3 shall be conclusive and the department may upon the basis of  
 4 such facts ascertained assess the amount due, modify, set  
 5 aside, or revise the prior assessment and require the  
 6 employer to pay the amount due with penalty and interest as  
 7 provided for in this chapter. A copy of the decision of the  
 8 department and the assessment of the amount due shall be  
 9 mailed to the employer at his last known principal place of  
 10 business and thereupon become final."

11 **Section 14.** Section 39-51-1303, MCA, is amended to  
 12 read:

13 "39-51-1303. Collection of unpaid contributions taxes  
 14 by civil action. (1) If, after due notice, any employer  
 15 defaults in any payment of contributions taxes, penalties,  
 16 or interest thereon, the department may at its discretion  
 17 initiate a civil action in the name of the Montana  
 18 department of labor and industry to collect the amount due,  
 19 and the employer adjudged in default shall pay the costs of  
 20 such action.

21 (2) An action for the collection of contributions taxes  
 22 due must be brought within 5 years after the due date of  
 23 such contributions taxes or it is barred.

24 (3) The department may pursue its remedy under either  
 25 this section or 39-51-1304, or both."

1 **Section 15.** Section 39-51-1304, MCA, is amended to  
 2 read:

3 "39-51-1304. Lien for payment of unpaid contributions  
 4 and assessments taxes -- levy and execution. (1) Unpaid  
 5 ~~contributions--and--assessments--under--39-51-484(4)~~ taxes,  
 6 including penalties and interest assessed thereon, have the  
 7 effect of a judgment against the employer, arising at the  
 8 time such payments are due. The department may issue a  
 9 certificate setting forth the amount of payments due and  
 10 directing the clerk of the district court of any county of  
 11 the state to enter the certificate as a judgment in the  
 12 docket pursuant to 25-9-301. From the time the judgment is  
 13 docketed, it becomes a lien upon all real and personal  
 14 property of the employer. ~~From--the-time-the-judgment-is~~  
 15 ~~filed-with-the-secretary-of-state-or-a-registrar-of-personal~~  
 16 ~~property-specifically-describing-the-personal--property,~~ ~~it~~  
 17 ~~becomes-a-lien-upon-personal-property-of-the-employer.~~ After  
 18 the due process requirements of 39-51-1109 and 39-51-2403  
 19 have been satisfied, the department may enforce the judgment  
 20 pursuant to Title 25, chapter 13, except that the department  
 21 may enforce the judgment at any time within 10 years of the  
 22 creation of the lien.

23 (2) The lien provided for in subsection (1) is not  
 24 valid against any third party owning an interest in real or  
 25 personal property against which the judgment is enforced if:

1 (a) the third party's interest is recorded prior to the  
2 entrance of the certificate as a judgment; and

3 (b) the third party receives from the most recent  
4 grantor of the interest a signed affidavit stating that all  
5 ~~contributions, assessments~~ taxes, penalties, and interest  
6 due from the grantor have been paid.

7 (3) A grantor who signs and delivers an affidavit is  
8 subject to the penalties imposed by 39-51-3204 if any part  
9 of it is untrue. Notwithstanding the provisions of  
10 39-51-3204, the department may proceed against the employer  
11 under this section or 39-51-1303, or both, to collect the  
12 delinquent ~~contributions, assessments~~ taxes, penalties, and  
13 interest.

14 (4) The lien provided for in subsection (1) must be  
15 released upon payment in full of the unpaid taxes,  
16 penalties, and accumulated interest. The department may  
17 release or may partially release the lien upon partial  
18 payment or whenever the department determines that the  
19 release or partial release of the lien will facilitate the  
20 collection of unpaid taxes, penalties, or interest. The  
21 department may release the lien if it determines that the  
22 lien is unenforceable."

23 **Section 16.** Section 39-51-1305, is amended to read:

24 "39-51-1305. Priority of payment of contributions taxes  
25 due under legal dissolutions or distributions. In the event

1 of any distribution of an employer's assets pursuant to an  
2 order of any court under the laws of this state, including  
3 any receivership, assignment for benefit of creditors,  
4 adjudicated insolvency, composition, or similar proceeding,  
5 contributions taxes then or thereafter due shall be paid in  
6 full prior to all other claims, except taxes and claims for  
7 wages of not more than \$250 to each claimant earned within 6  
8 months of the commencement of the proceeding."

9 **Section 17.** Section 39-51-1306, MCA, is amended to  
10 read:

11 "39-51-1306. Reciprocity with other states for  
12 collection of unpaid contributions taxes. (1) The courts of  
13 this state shall recognize and enforce liabilities for  
14 unemployment contributions taxes and any other special  
15 assessments imposed by other states which extend a like  
16 comity to this state.

17 (2) The department is hereby empowered to sue in the  
18 courts of any other jurisdiction which extends such comity  
19 to collect unemployment contributions taxes, penalties, and  
20 interest due this state. The officials of other states which  
21 by statute or otherwise extend a like comity to this state  
22 may sue in the courts of this state to collect for such  
23 contributions taxes and any other special assessments and  
24 interest and penalties, if any, due such state. In any such  
25 case the administrator may through his attorney or attorneys

1 institute and conduct such suit for such other state.

2 (3) Venue of such proceedings shall be the same as for  
3 actions to collect delinquent contributions taxes,  
4 penalties, and interest due under this chapter.

5 (4) A certificate by the secretary of any such state  
6 under the great seal of such state attesting the authority  
7 of such official or officials to collect unemployment  
8 insurance contributions taxes and other special assessments,  
9 penalties, and interest shall be conclusive evidence of such  
10 authority."

11 **Section 18.** Section 39-51-2110, MCA, is amended to  
12 read:

13 "39-51-2110. Payment of benefits to aliens. (1)  
14 Effective--January--1,--1978, benefits Benefits shall not be  
15 paid payable on the basis of services performed by an alien  
16 unless such the alien is an individual who has-been was  
17 lawfully admitted for permanent residence at the time the  
18 services were performed, was lawfully present for the  
19 purposes of performing the services, or otherwise-is was  
20 permanently residing in the United States under color of  
21 law, at the time the services were performed, including an  
22 alien who is was lawfully present in the United States as a  
23 result of the application of the provisions of section  
24 203(a)(7) or section 212(d)(5) of the Immigration and  
25 Nationality Act.

1 (2) Any data or information required of individuals  
2 applying for benefits to determine whether benefits are not  
3 payable to them because of their alien status shall be  
4 uniformly required from all applicants for benefits.

5 (3) In the case of an individual whose application for  
6 benefits would otherwise be approved, no determination that  
7 benefits to such individual are not payable because of his  
8 alien status shall be made except upon a preponderance of  
9 the evidence."

10 ~~Section 19--Section--39-51-2509--MCA,--is--amended--to~~  
11 ~~read:~~

12 ~~"39-51-2509--Weekly--extended--benefit--amount: (1) The~~  
13 ~~weekly-extended-benefit-amount-payable-to-an-individual--for~~  
14 ~~a-week-of-total-unemployment-in-his-eligibility-period-shall~~  
15 ~~be--an--amount-equal-to-the-weekly-benefit-amount,--except-as~~  
16 ~~provided-in-subsection-(2):~~

17 ~~(2)--For-any-week--during--a--period--in--which--federal~~  
18 ~~payments--to--this--state--under--section--204--of--the~~  
19 ~~Federal-State-Extended-Unemployment-Compensation-Act-of-1978~~  
20 ~~are-reduced-under-an-order-issued-under-section-252--of--the~~  
21 ~~Balanced--Budget--and-Emergency-Deficit-Control-Act-of-1985,~~  
22 ~~the-weekly-extended-benefit-amount-payable-to-an--individual~~  
23 ~~for--a--week-of-total-unemployment-in-his-eligibility-period~~  
24 ~~must-be-reduced-by-a-percentage-equivalent-to-the-percentage~~  
25 ~~of-the-reduction-in-the-federal-payment. The-reduced-weekly~~

~~extended benefit amount, if not a full dollar amount, must be rounded to the nearest lower full dollar amount, payable to him during his applicable benefit year."~~

~~Section 20. Section 39-51-2510, MCA, is amended to read:~~

~~"39-51-2510. Total extended benefit amount. The (1) Except as provided in subsection (2), the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:~~

~~(1)(a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;~~

~~(2)(b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.~~

~~(2) During any fiscal year in which federal payments to this state under section 204 of the Federal State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his applicable benefit year must be reduced by an amount equal to the aggregate of the reductions under 39-51-2509 in the weekly amounts paid to the individual."~~

**Section 19.** Section 39-51-2602, MCA, is amended to read:

**"39-51-2602. Approved trade readjustment training under federal programs.** (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974; or under Title III of the federal Job Training Partnership Act;

(b) in which he is because of participation in such approved training described in subsection (1)(a) by reason of leaving work to enter such the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal



1 Trade Act of 1974 and the federal Job Training Partnership  
2 Act."

3 **Section 20.** Section 39-51-1121, MCA, is amended to  
4 read:

5 "39-51-1121. Definitions. As used in this part and part  
6 12, the following definitions apply:

7 (1) "Computation date" means the reporting period  
8 ending September 30 preceding the calendar year for which a  
9 covered employer's contribution rate is effective.

10 (2) "Cutoff date" means ~~December-31~~ November-30 OCTOBER  
11 31 immediately following the computation date. The  
12 department may extend the cutoff date in meritorious cases.

13 (3) "Deficit employer" means an employer who is subject  
14 under this chapter and who has established a record of  
15 accumulated benefits charged to the employer's account in  
16 excess of the employer's accumulated contributions paid as  
17 of the cutoff date.

18 ~~{4}--"Department"--means--the--department--of--labor--and~~  
19 ~~industry;~~

20 ~~{5}{4}~~ "Eligible employer" means an employer who has  
21 been subject under this chapter for the 3 fiscal years  
22 immediately preceding the computation date and who has:

23 ~~{a}--filed--all--contribution--reports--prescribed--by--the~~  
24 ~~department;~~

25 ~~{b}--paid--all--contributions--and--all--assessments--under~~

1 ~~39-51-404{4})--and--penalties--and--interest--thereon;~~

2 ~~{c}{a}~~ established a record of accumulated  
3 contributions in excess of benefits charged to the  
4 employer's account; and

5 ~~{d}{b}~~ paid wages in at least 1 of the 8 calendar  
6 quarters preceding the computation date.

7 ~~{6}{5}~~ "Fiscal year" means the four consecutive  
8 calendar quarters ending on September 30.

9 ~~{7}{6}~~ "Governmental entities" means the state or any  
10 political subdivision of the state or an instrumentality of  
11 the state or a political subdivision, including any  
12 employing unit funded directly by tax levies.

13 {7} "New employer" means an employer who:

14 {a) has not been subject to the provisions of this  
15 chapter for the 3 fiscal years immediately preceding the  
16 computation date; and

17 {b) has established a record of accumulated  
18 contributions in excess of benefits charged to the  
19 employer's account.

20 (8) "Taxable wage base" means the amount of wages  
21 subject to contributions and to assessments under  
22 39-51-404(4) for each calendar year. Payment of  
23 contributions and of assessments under 39-51-404(4) may  
24 apply only to wages paid up to and including the amount  
25 specified in 39-51-1108.

~~(9) -- "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."~~

**Section 21.** Section 39-51-1125, MCA, is amended to read:

**"39-51-1125. Computation of payments in lieu of contributions.** (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such

employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

**Section 22.** Section 39-51-1212, MCA, is amended to read:

**"39-51-1212. Experience rating for governmental entities.** (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's

1 account for all past periods which are completed  
2 transactions by December 31 by total wages from date of  
3 subjectivity of the employing unit through December 31; and

4 (b) the benefit cost for all past years of governmental  
5 entities electing to pay contributions compared with total  
6 payrolls reported for all past years by these governmental  
7 entities used as a median, with the rates so fixed using the  
8 median that the rates will, when applied to the total annual  
9 payroll for subject governmental entities, yield total paid  
10 contributions equaling approximately the total benefit  
11 costs.

12 (3) New governmental entities electing to pay  
13 contributions shall be assigned the median rate for the year  
14 in which they become subject.

15 (4) At no time may the minimum rate be less than 0.1%  
16 or the maximum rate be greater than 1.5%. The rates are to  
17 be graduated at one-tenth intervals.

18 (5) In the event benefit charges exceed contributions  
19 paid in the last 2 completed fiscal years, governmental  
20 entities' rates will be adjusted by increasing all rates to  
21 the next higher schedule.

22 (6) The computed rate is effective July 1 of each year.

23 (7) Governmental entities must be charged for their  
24 share of the total benefits paid to a claimant if the  
25 governmental entity contributed wages during the claimant's

1 base period. The benefit charged must be based on the  
2 percentage of wages paid by the governmental entity as  
3 compared to the total wages paid by all employers in the  
4 claimant's base period.

5 (8) A payment may not be required under this section  
6 with respect to benefits paid to an individual if the  
7 governmental employer continues to provide employment to the  
8 individual with no reduction in hours or wages."

9 **Section 23.** Section 39-51-1213, MCA, is amended to  
10 read:

11 **"39-51-1213. Classification of employers for experience**  
12 **rating purposes.** (1) The department shall for each calendar  
13 year classify employers in accordance with their actual  
14 experience in the payment of contributions and with respect  
15 to benefits charged against their accounts, with  
16 contribution rates reflecting benefit experience. Each  
17 employer's rate for a calendar year shall be determined on  
18 the basis of the employer's record as of October 1 of the  
19 preceding calendar year.

20 (2) In making the classification, each eligible and  
21 deficit employer's contribution rate is determined in the  
22 manner set forth below:

23 (a) Each employer is given an "experience factor" which  
24 is contributions paid since October 1, 1981, minus benefits  
25 charged on each employer's account since October 1, 1981,

1 divided by the employer's average annual taxable payroll  
 2 rounded to the next lower dollar amount for the 3 fiscal  
 3 years immediately preceding the computation date. The  
 4 computation of the "experience factor" shall be to six  
 5 decimal places.

6 (b) Schedules shall be prepared listing all eligible  
 7 and deficit employers in inverse numerical order of their  
 8 experience factors. There shall be listed on such schedules  
 9 for each employer in addition to the experience factor:

10 (i) the amount of the employer's taxable payroll for  
 11 the fiscal year ending on the computation date; and

12 (ii) the cumulative total consisting of the sum of the  
 13 employer's taxable payroll for the fiscal year ending on the  
 14 computation date and the corresponding taxable payrolls for  
 15 all other employers preceding that employer on the  
 16 schedules.

17 (3) The cumulative taxable payroll amounts listed on  
 18 the schedules provided for in 39-51-1218 shall be segregated  
 19 into groups that will yield approximately the average tax  
 20 rate according to the tax schedule assigned for that  
 21 particular taxable year. Each group shall be identified by  
 22 the rate class number listed in the table which represents  
 23 the percentage limits of each group. Each employer on the  
 24 schedules is assigned that contribution rate opposite that  
 25 employer's rate class for the tax schedule in effect for the

1 taxable year.

2 (4) (a) If the grouping of rate classes requires the  
 3 inclusion of exactly one-half of an employer's taxable  
 4 payroll, the employer is assigned the lower of the two rates  
 5 designated for the two classes in which the halves of that  
 6 employer's taxable payroll are so required.

7 (b) If the group of rate classes requires the inclusion  
 8 of a portion other than exactly one-half of an employer's  
 9 taxable payroll, the employer is assigned the rate  
 10 designated for the class in which the greater part of that  
 11 employer's taxable payroll is so required.

12 (c) If one or more employers on the schedules have  
 13 experience factors identical to that of the last employer  
 14 included in a particular rate class, all such employers are  
 15 included in and assigned the contribution rate specified for  
 16 such class, notwithstanding the provisions of 39-51-1214.

17 (5) If the taxable payroll amount or the experience  
 18 factor or both such taxable payroll amount and experience  
 19 factor of any eligible or deficit employer listed on the  
 20 schedules is changed, the employer is placed in that  
 21 position on the schedules which the employer would have  
 22 occupied had that employer's taxable payroll amount or  
 23 experience factor as changed been used in determining that  
 24 employer's position in the first instance, but such change  
 25 does not affect the position or rate classification of any

1 other employer listed on the schedules and does not affect  
2 the rate determination for previous years.

3 (6) ~~Benefit--employers~~ An employer who have has not  
4 filed all required payroll reports or paid all contributions  
5 taxes, penalties, and interest due by the cutoff date must  
6 be assigned the maximum contribution rate in effect for the  
7 taxable year for his classification as an eligible, deficit,  
8 or new employer."

9 **Section 24.** Section 39-51-1214, MCA, is amended to  
10 read:

11 **"39-51-1214. Benefit payments chargeable to employer**  
12 **experience rating accounts.** (1) Except for cost  
13 reimbursement, benefits paid shall be charged to the account  
14 of each of the claimant's base period employers. The benefit  
15 charged must be based on the percentage of wages paid by the  
16 employer as compared to the total wages paid by all  
17 employers in the claimant's base period.

18 (2) No charge shall be made to the account of such  
19 covered employer with respect to benefits paid under the  
20 following situations:

21 (a) if paid to a worker who terminated his services  
22 voluntarily without good cause attributable to such covered  
23 employer or who had been discharged for misconduct in  
24 connection with such services;

25 (b) if paid in accordance with the extended benefit

1 program triggered by either national or state indicators; ~~or~~

2 (c) if the base period employer continues to provide  
3 employment with no reduction in hours or wages; or

4 (d) if benefits are paid to claimants who are in  
5 training approved under 39-51-2307."

6 **Section 25.** Section 39-51-1217, MCA, is amended to  
7 read:

8 **"39-51-1217. Schedule of rates assigned based on trust**  
9 **fund reserve.** (1) The rate schedule for each calendar year  
10 is assigned based upon the ratio of the trust fund balance  
11 as of ~~December--31~~ November 30 prior to the rate year to  
12 total wages in covered employment for the 12-month period  
13 ending June 30 prior to the computation date.

14 (2) The ratio at the top of each tax schedule in the  
15 tax table shown in 39-51-1218 represents the minimum fund  
16 level required for a specific tax schedule to be in effect.

17 (3) Employer rates are assigned in accord with the  
18 rates provided in each schedule for eligible--~~unrated~~; and  
19 deficit employers, based upon their experience as defined in  
20 this section.

21 (4) For the calendar year 1990 and each year  
22 thereafter, any employer classified as ~~unrated~~ a new  
23 employer must be assigned a rate equal to the average rate  
24 of contributions paid by employers in the same major  
25 industrial classification for the calendar year preceding

1 the computation date, plus an adjustment for the difference  
 2 between the average tax rate assigned for the previous  
 3 calendar year and the average rate in effect for the current  
 4 calendar year. At no time may an unrated a new employer be  
 5 assigned a rate lower than 1%. The computation of the  
 6 average rate of contributions in a major industrial  
 7 classification must exclude those employer accounts that are  
 8 not eligible for the computation of an experience rating  
 9 solely by reason of insufficient experience. The department  
 10 shall develop the major industrial classifications for the  
 11 state and shall annually determine the contribution rate for  
 12 each classification."

13 **Section 26.** Section 39-51-1218, MCA, is amended to  
 14 read:

15 **"39-51-1218. Rate schedules.**  
 16 SCHEDULES OF CONTRIBUTION RATES -- Part I  
 17 Sched. Sched. Sched. Sched.  
 18 I II III IV  
 19 Minimum Ratio of  
 20 Fund to Total Wages (.0260) (.0245) (.0225) (.0200)  
 21 Average Tax Rate 1.4 1.6 1.8 2.0

22 Rate Class Contribution Rates For Eligible Employers  
 23 I 0.0% 0.1% 0.3% 0.5%

1	2	0.1	0.3	0.5	0.7
2	3	0.3	0.5	0.7	0.9
3	4	0.5	0.7	0.9	1.1
4	5	0.7	0.9	1.1	1.3
5	6	0.9	1.1	1.3	1.5
6	7	1.1	1.3	1.5	1.7
7	8	1.3	1.5	1.7	1.9
8	9	1.5	1.7	1.9	2.1
9	10	1.7	1.9	2.1	2.3

10 **Contribution-Rates-For-Unrated-Employers**  
 11 2-0% 2-2% 2-4% 2-6%

12	Rate Class	Contribution Rates For Deficit Employers			
13	1	3.2%	3.4%	3.6%	3.8%
14	2	3.4	3.6	3.8	4.0
15	3	3.6	3.8	4.0	4.2
16	4	3.8	4.0	4.2	4.4
17	5	4.0	4.2	4.4	4.6
18	6	4.2	4.4	4.6	4.8
19	7	4.4	4.6	4.8	5.0
20	8	4.6	4.8	5.0	5.2
21	9	4.8	5.0	5.2	5.4
22	10	6.4	6.4	6.4	6.4

1           **SCHEDULES OF CONTRIBUTION RATES -- Part II**

2           Sched.   Sched.   Sched.   Sched.   Sched.   Sched.

3           V           VI          VII       VIII      IX       X

4           (.0170)   (.0135)   (.0095)   (.0075)   (.0050)   (.....)

5           2.2       2.4       2.6       2.8       3.0       3.2

6           **Contribution Rates For Eligible Employers**

7           0.7%      0.9%      1.1%      1.3%      1.5%      1.7%

8           0.9       1.1       1.3       1.5       1.7       1.9

9           1.1       1.3       1.5       1.7       1.9       2.1

10          1.3       1.5       1.7       1.9       2.1       2.3

11          1.5       1.7       1.9       2.1       2.3       2.5

12          1.7       1.9       2.1       2.3       2.5       2.7

13          1.9       2.1       2.3       2.5       2.7       2.9

14          2.1       2.3       2.5       2.7       2.9       3.1

15          2.3       2.5       2.7       2.9       3.1       3.3

16          2.5       2.7       2.9       3.1       3.3       3.5

17          **Contribution Rates For Unrated Employers**

18          2.8%      3.0%      3.2%      3.4%      3.6%      3.8%

19          **Contribution Rates For Deficit Employers**

20          4.0%      4.2%      4.4%      4.6%      4.8%      5.0%

1           4.2       4.4       4.6       4.8       5.0       5.2

2           4.4       4.6       4.8       5.0       5.2       5.4

3           4.6       4.8       5.0       5.2       5.4       5.6

4           4.8       5.0       5.2       5.4       5.6       5.8

5           5.0       5.2       5.4       5.6       5.8       6.0

6           5.2       5.4       5.6       5.8       6.0       6.2

7           5.4       5.6       5.8       6.0       6.2       6.4

8           5.6       5.8       6.0       6.2       6.4       6.4

9           6.4       6.4       6.4       6.4       6.4       6.4"

10           **Section 27.** Section 39-51-3201, MCA, is amended to

11           read:

12           "39-51-3201. Making false statement or representation

13           or failing to disclose material fact in order to obtain or

14           increase benefits -- administrative penalty and remedy. (1)

15           A person who makes a false statement or representation

16           knowing it to be false or knowingly fails to disclose a

17           material fact in order to obtain or increase any benefit or

18           other payment under this chapter or under an employment

19           security law of any other state or territory or the federal

20           government, either for himself or for any other person, is:

21           (1) (a) disqualified for benefits thereafter for a

22           period of not more than 52 weeks, beginning with the first

23           compensable week following the date of such determination by

24           the department, the length of time of the disqualification

25           as herein described to be determined by the department in

1 accordance with the severity of each case; and

2 ~~(2)(b)~~ required to repay to the department, either  
 3 directly or as authorized by the department, by offset of  
 4 future benefits to which he may be entitled, or by a  
 5 combination of both such methods, a sum equal to the amount  
 6 wrongfully received by him, plus ~~interest-at-the-rate-of-18%~~  
 7 ~~a--year--computed--from--the--time--the--false--statement--or~~  
 8 ~~representation--or--the--failure--to--disclose--a--material--fact~~  
 9 ~~occurred,--except--that--future--benefits--may--not--be--used--to~~  
 10 ~~offset--the--interest--due.~~ THE DEPARTMENT MAY ASSESS a penalty  
 11 equivalent-to-33% NOT TO EXCEED 100% of the fraudulently  
 12 obtained benefits, except that future benefits may not be  
 13 used to offset the penalty due. However, he is not required  
 14 to repay any amount wrongfully obtained more than 5 years  
 15 prior to the date of the department's determination that he  
 16 made false statements, willful nondisclosure, or  
 17 misrepresentation.

18 (2) All money accruing from the penalty under  
 19 subsection (1)(b) must be deposited in the federal special  
 20 revenue account. Money deposited in that account may be  
 21 appropriated to the department to be used to detect and  
 22 collect unpaid taxes and overpayments of benefits to the  
 23 extent that federal grant revenues are inadequate for these  
 24 purposes. Money in the account not appropriated for these  
 25 purposes must be transferred by the department to the

1 unemployment insurance trust fund at the end of each fiscal  
 2 year."

3 **Section 28.** Section 39-51-3202, MCA, is amended to  
 4 read:

5 **"39-51-3202. Making false statement or representation**  
 6 **or failing to disclose material fact in order to obtain or**  
 7 **increase benefits -- criminal penalty. (1) A person who, in**  
 8 **order to obtain or increase for personal gain or for any**  
 9 **other person benefits under this chapter or under an**  
 10 **employment security law of any other state or territory or**  
 11 **the federal government, knowingly makes a false statement or**  
 12 **representation or knowingly fails to disclose a material**  
 13 **fact is guilty of a crime under 45-7-203, and the department**  
 14 **may cause criminal proceedings to be initiated against the**  
 15 **person.**

16 (2) A person will be required to repay to the  
 17 department an amount as determined by 39-51-3201(2)(1)(b).

18 (3) For purposes of this section, restitution awarded  
 19 under this section must include a sum equal to the amount  
 20 wrongfully received, plus ~~18%--interest--a--year,~~ THE  
 21 DEPARTMENT MAY ASSESS a penalty equivalent--to--33% NOT TO  
 22 EXCEED 100% of the amount wrongfully received,  
 23 notwithstanding--the--provisions--of--25-9-205. All money  
 24 accruing from the penalty must be deposited in the federal  
 25 special revenue account. Money deposited in that account may



1 be appropriated to the department to be used to detect and  
 2 collect unpaid taxes and overpayments of benefits to the  
 3 extent that federal grant revenues are inadequate for these  
 4 purposes. Money in the account not appropriated for these  
 5 purposes must be transferred by the department to the  
 6 unemployment insurance trust fund at the end of each fiscal  
 7 year."

8 **Section 29.** Section 39-51-2107, MCA, is amended to  
 9 read:

10 "**39-51-2107.** Services for remuneration to be performed  
 11 during benefit year as condition for receiving benefits in  
 12 second benefit year -- amount required. An individual who  
 13 received benefits during a benefit year must perform  
 14 services for remuneration ~~after the beginning of that year~~  
 15 following the initial separation from employment in the  
 16 previous benefit year as a condition for receiving benefits  
 17 in a second benefit year. ~~The service may be in either~~  
 18 ~~covered or noncovered employment.~~ The service must  
 19 constitute employment as defined in 39-51-203 and 39-51-204.

20 However, the individual must have earned the lesser of  
 21 three-thirteenths of his high quarter of his second benefit  
 22 year or 6 times his weekly benefit amount of that same  
 23 year."

24 **Section 30.** Section 39-51-2302, MCA, is amended to  
 25 read:

1 "**39-51-2302.** Disqualification for leaving work without  
 2 good cause. (1) An individual shall be disqualified for  
 3 benefits if he has left work without good cause attributable  
 4 to his employment.

5 (2) He may not be disqualified if the department finds  
 6 that he left his employment because of personal illness or  
 7 injury not associated with misconduct ~~or left his employment~~  
 8 upon the advice of a licensed and practicing physician and,  
 9 after recovering from his illness or injury when recovery is  
 10 certified by a licensed and practicing physician, he  
 11 returned to his employer and offered his service and his  
 12 regular or comparable suitable work was not available, if so  
 13 found by the department, provided he is otherwise eligible.

14 (3) To requalify for benefits, an individual must  
 15 perform services other than self-employment for which  
 16 remuneration is received equal to or in excess of six times  
 17 his weekly benefit amount subsequent to the week in which  
 18 the act causing the disqualification occurred unless he has  
 19 been in regular attendance at an educational institution  
 20 accredited by the state of Montana for at least 3  
 21 consecutive months from the date of his enrollment."

22 ~~Section 33, Section 39-51-2303, MCA, is amended to~~  
 23 ~~read:~~

24 "~~39-51-2303, Disqualification for discharge or~~  
 25 suspension ~~due to misconduct. An individual shall be~~

1 ~~disqualified--for--benefits--after---being---discharged~~ or  
2 ~~suspended;~~

3 ~~{1}--for-misconduct-connected-with-the-individual's-work~~  
4 ~~or--affecting---the---individual's---employment--until--the~~  
5 ~~individual---has---performed---services,---other---than~~  
6 ~~self-employment,--for-which-remuneration-is-received-equal-to~~  
7 ~~or-in-excess-of-eight-times-the-individual's-weekly--benefit~~  
8 ~~amount--subsequent--to-the-week-in-which-the-act-causing-the~~  
9 ~~disqualification-occurred;~~

10 ~~{2}--for---gross---misconduct---connected---with---the~~  
11 ~~individual's--work--or-committed-on-the-employer's-premises,~~  
12 ~~as-determined-by-the-department,--for-a-period-of-52-weeks;"~~

13 NEW SECTION. **Section 31.** Repealer. Section 39-51-2308,  
14 MCA, is repealed.

15 NEW SECTION. **Section 32.** Severability. If a part of  
16 [this act] is invalid, all valid parts that are severable  
17 from the invalid part remain in effect. If a part of [this  
18 act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are  
20 severable from the invalid applications.

21 NEW SECTION. **Section 33.** Effective date. [This act] is  
22 effective July 1, 1991.

-End-

## 1 HOUSE BILL NO. 726

2 INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL,

3 O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE

4 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
7 CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES";  
8 TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM  
9 THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR  
10 AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME  
11 FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO  
12 CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND  
13 INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER  
14 LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY  
15 PAYMENT OF BENEFITS TO ALIENS; ~~TO REVISE PAYMENT OF EXTENDED~~  
16 ~~BENEFITS~~; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS  
17 THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO  
18 REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO  
19 PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS  
20 WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE  
21 FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN  
22 OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST  
23 BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND  
24 BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR  
25 LEAVING WORK WITHOUT GOOD CAUSE; ~~TO DISQUALIFY AN INDIVIDUAL~~

1 ~~FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK~~  
2 ~~DUE TO MISCONDUCT~~; TO REPEAL DISQUALIFICATION FOR BENEFITS  
3 BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201,  
4 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602,  
5 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110,  
6 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214,  
7 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303,  
8 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110,  
9 39-51-2302, ~~39-51-2303, 39-51-2509, 39-51-2510,~~ 39-51-2602,  
10 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION  
11 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 39-51-201, MCA, is amended to read:15 **\*39-51-201. General definitions.** As used in this  
16 chapter, unless the context clearly requires otherwise, the  
17 following definitions apply:18 (1) "Annual payroll" means the total amount of wages  
19 paid by an employer, regardless of the time of payment, for  
20 employment during a calendar year.21 (2) "Base period" means the first four of the last five  
22 completed calendar quarters immediately preceding the first  
23 day of an individual's benefit year. However, in the case of  
24 a combined-wage claim pursuant to the arrangement approved  
25 by the secretary of labor of the United States, the base**THIRD READING**

-2- AS AMENDED HB 726

Included Amendments of 2-23

Corrected Printing



1 period shall be that applicable under the unemployment law  
 2 of the paying state. For an individual who fails to meet the  
 3 qualifications of 39-51-2105 or a similar statute of another  
 4 state due to a temporary total disability as defined in  
 5 39-71-116 or a similar statute of another state or the  
 6 United States, the base period means the first four quarters  
 7 of the last five quarters preceding the disability if a  
 8 claim for unemployment benefits is filed within 24 months of  
 9 the date on which the individual's disability was incurred.

10 (3) "Benefits" means the money payments payable to an  
 11 individual, as provided in this chapter, with respect to the  
 12 individual's unemployment.

13 (4) "Benefit year", with respect to any individual,  
 14 means the 52-consecutive-week period beginning with the  
 15 first day of the calendar week in which such individual  
 16 files a valid claim for benefits, except that the benefit  
 17 year shall be 53 weeks if filing a new valid claim would  
 18 result in overlapping any quarter of the base year of a  
 19 previously filed new claim. A subsequent benefit year may  
 20 not be established until the expiration of the current  
 21 benefit year. However, in the case of a combined-wage claim  
 22 pursuant to the arrangement approved by the secretary of  
 23 labor of the United States, the base period is the period  
 24 applicable under the unemployment law of the paying state.

25 (5) "Board" means the board of labor appeals provided

1 for in Title 2, chapter 15, part 17.

2 (6) "Calendar quarter" means the period of 3  
 3 consecutive calendar months ending on March 31, June 30,  
 4 September 30, or December 31.

5 (7) "Contributions" means the money payments to the  
 6 state unemployment insurance fund required by this chapter  
 7 but does not include assessments under 39-51-404(4).

8 (8) "Department" means the department of labor and  
 9 industry provided for in Title 2, chapter 15, part 17.

10 (9) "Employing unit" means any individual or  
 11 organization, including the state government, any of its  
 12 political subdivisions or instrumentalities, any  
 13 partnership, association, trust, estate, joint-stock  
 14 company, insurance company, or corporation, whether domestic  
 15 or foreign, or the receiver, trustee in bankruptcy, trustee  
 16 or successor thereof, or the legal representative of a  
 17 deceased person which has or had in its employ one or more  
 18 individuals performing services for it within this state,  
 19 except as provided under ~~subsections--(8)--and--(9)--of~~  
 20 ~~39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals  
 21 performing services within this state for any employing unit  
 22 which maintains two or more separate establishments within  
 23 this state are considered to be employed by a single  
 24 employing unit for all the purposes of this chapter. Each  
 25 individual employed to perform or assist in performing the

1 work of any agent or employee of an employing unit is deemed  
 2 to be employed by such employing unit for the purposes of  
 3 this chapter, whether such individual was hired or paid  
 4 directly by such employing unit or by such agent or  
 5 employee, provided the employing unit has actual or  
 6 constructive knowledge of the work.

7 (10) "Employment office" means a free public employment  
 8 office or branch thereof operated by this state or  
 9 maintained as a part of a state-controlled system of public  
 10 employment offices or such other free public employment  
 11 offices operated and maintained by the United States  
 12 government or its instrumentalities as the department may  
 13 approve.

14 (11) "Fund" means the unemployment insurance fund  
 15 established by this chapter to which all contributions and  
 16 payments in lieu of contributions are required to be paid  
 17 and from which all benefits provided under this chapter  
 18 shall be paid.

19 (12) "Gross misconduct" means a criminal act, other than  
 20 a violation of a motor vehicle traffic law, for which an  
 21 individual has been convicted in a criminal court or has  
 22 admitted or conduct which demonstrates a flagrant and wanton  
 23 disregard of and for the rights or title or interest of a  
 24 fellow employee or the employer.

25 (13) "Hospital" means an institution which has been

1 licensed, certified, or approved by the state as a hospital.

2 (14) "Independent contractor" means an individual who  
 3 renders service in the course of an occupation and:

4 (a) has been and will continue to be free from control  
 5 or direction over the performance of the services, both  
 6 under his contract and in fact; and

7 (b) is engaged in an independently established trade,  
 8 occupation, profession, or business.

9 (15) (a) "Institution of higher education", for the  
 10 purposes of this part, means an educational institution  
 11 which:

12 (i) admits as regular students only individuals having  
 13 a certificate of graduation from a high school or the  
 14 recognized equivalent of such a certificate;

15 (ii) is legally authorized in this state to provide a  
 16 program of education beyond high school;

17 (iii) provides an educational program for which it  
 18 awards a bachelor's or higher degree or provides a program  
 19 which is acceptable for full credit toward such a degree, a  
 20 program of postgraduate or postdoctoral studies, or a  
 21 program of training to prepare students for gainful  
 22 employment in a recognized occupation; and

23 (iv) is a public or other nonprofit institution.

24 (b) Notwithstanding any of the foregoing provisions of  
 25 this subsection, all colleges and universities in this state

1 are institutions of higher education for purposes of this  
2 part.

3 (16) "State" includes, in addition to the states of the  
4 United States of America, the District of Columbia, Puerto  
5 Rico, the Virgin Islands, and the Dominion of Canada.

6 {17} "Taxes" means contributions and assessments  
7 required under this chapter but does not include penalties  
8 or interest for past-due or unpaid contributions or  
9 assessments.

10 ~~{17}~~{18} "Unemployment insurance administration fund"  
11 means the unemployment insurance administration fund  
12 established by this chapter from which administrative  
13 expenses under this chapter shall be paid.

14 ~~{18}~~{19} (a) "Wages" means all remuneration payable for  
15 personal services, including commissions and bonuses, the  
16 cash value of all remuneration payable in any medium other  
17 than cash, and backpay received pursuant to a dispute  
18 related to employment. The reasonable cash value of  
19 remuneration payable in any medium other than cash shall be  
20 estimated and determined in accordance with rules prescribed  
21 by the department.

22 (b) The term "wages" does not include:

23 (i) the amount of any payment made by the employer, if  
24 the payment was made under a plan established for the  
25 employees in general or for a specific class or classes of

1 employees, to or on behalf of the employee for:

2 (A) retirement;

3 (B) sickness or accident disability, ~~but in the case of~~  
4 ~~payments--made--by--an--employer--directly--to--an--employee, only~~  
5 ~~those payments made~~ under a workers' compensation law are  
6 ~~excluded from "wages";~~

7 (C) medical and hospitalization expenses in connection  
8 with sickness or accident disability; or

9 (D) death;

10 (ii) remuneration paid by any county welfare office from  
11 public assistance funds for services performed at the  
12 direction and request of such county welfare office.

13 ~~{19}~~{20} "Week" means a period of 7 consecutive calendar  
14 days ending at midnight on Saturday.

15 ~~{20}~~{21} An individual's "weekly benefit amount" means  
16 the amount of benefits the individual would be entitled to  
17 receive for 1 week of total unemployment."

18 **Section 2.** Section 39-51-202, MCA, is amended to read:

19 **"39-51-202. Employer defined.** "Employer" means:

20 (1) any employing unit whose total annual payroll  
21 within either the current or preceding calendar year equals  
22 or exceeds the sum of \$1,000;

23 (2) any agricultural employing unit that pays \$20,000  
24 or more in cash to workers for agricultural labor in any  
25 quarter in the current or preceding calendar year or employs

1 10 or more workers in agricultural labor on 20 days in 20  
 2 different weeks during the current or preceding calendar  
 3 year;

4 (3) any domestic employing unit that pays \$1,000 or  
 5 more in cash for domestic service in any quarter during the  
 6 current or preceding calendar year;

7 (2)(4) any individual or employing unit which acquired  
 8 the organization, trade, or business or substantially all of  
 9 the assets thereof of another which at the time of such  
 10 acquisition was an employer subject to this chapter;

11 (3)(5) any individual or employing unit which acquired  
 12 the organization, trade, or business or substantially all  
 13 the assets thereof of another employing unit not an employer  
 14 subject to this chapter and which, if subsequent to such  
 15 acquisition it were treated as a single unit with such other  
 16 employing unit, would be an employer under subsection (1) of  
 17 this section;

18 (4)(6) any employing unit not an employer by reason of  
 19 any other subsection of this section for which, within  
 20 either the current or preceding calendar year, service is or  
 21 was performed with respect to which such employing unit is  
 22 liable for any federal tax against which credit may be taken  
 23 for contributions paid into a state unemployment fund or an  
 24 employing unit which, as a condition for approval of this  
 25 chapter for full tax credit against the tax imposed by the

1 Federal Unemployment Tax Act, is required pursuant to such  
 2 act to be an employer under this chapter;

3 (5)(7) any employing unit which, having become an  
 4 employer under subsection (1), (2)(7)-(3) (2), (3), (4), (5),  
 5 or (4) (6) has not, under 39-51-1101, ceased to be an  
 6 employer subject to this chapter; or

7 (6)(8) for the effective period of its election  
 8 pursuant to 39-51-1102, any other employing unit which has  
 9 elected to become fully subject to this chapter."

10 **Section 3.** Section 39-51-203, MCA, is amended to read:

11 **"39-51-203. Employment defined.** (1) "Employment",  
 12 subject to other provisions of this section, means service  
 13 by an individual or by an officer of a corporation,  
 14 including service in interstate commerce, performed for  
 15 wages or under any contract of hire, written or oral,  
 16 express or implied.

17 (2) (a) The term "employment" includes an individual's  
 18 entire service performed within or both within and without  
 19 this state if:

20 (i) the service is localized in this state; or

21 (ii) the service is not localized in any state but some  
 22 of the service is performed in this state and:

23 (A) the base of operations or, if there is no base of  
 24 operations, then the place from which such service is  
 25 directed or controlled, is in this state; or

1 (B) the base of operations or place from which such  
2 service is directed or controlled is not in any state in  
3 which some part of the service is performed, but the  
4 individual's residence is in this state.

5 (b) Service is considered to be localized within a  
6 state if:

7 (i) the service is performed entirely within such  
8 state; or

9 (ii) the service is performed both within and without  
10 such state, but the service performed without such state is  
11 incidental to the individual's service within the state, for  
12 example, is temporary or transitory in nature or consists of  
13 isolated transactions.

14 (3) Service not covered under subsection (2) of this  
15 section and performed entirely without this state with  
16 respect to no part of which contributions are required and  
17 paid under an unemployment insurance law of any other state  
18 or of the federal government is considered to be employment  
19 subject to this chapter if the individual performing such  
20 services is a resident of this state and the department  
21 approves the election of the employing unit for whom such  
22 services are performed that the entire service of such  
23 individual is considered to be employment subject to this  
24 chapter.

25 (4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless  
2 and until it is shown to the satisfaction of the department  
3 that the individual is an independent contractor.

4 (5) The term "employment" includes service performed by  
5 an individual in the employ of this state or any of its  
6 instrumentalities (or in the employ of this state and one or  
7 more other states or their instrumentalities) for a hospital  
8 or institution of higher education located in this state.

9 The term "employment" includes service performed by all  
10 individuals, including without limitations those individuals  
11 who work for the state of Montana, its universities, any of  
12 its colleges, public schools, components or units thereof,  
13 or any local government unit and one or more other states or  
14 their instrumentalities or political subdivisions whose  
15 services are compensated by salary or wages.

16 (6) The term "employment" includes service performed by  
17 an individual in the employ of a religious, charitable,  
18 scientific, literary, or educational organization.

19 (7) (a) The term "employment" includes the service of  
20 an individual who is a citizen of the United States  
21 performed outside the United States, except in Canada, in  
22 the employ of an American employer, other than service which  
23 is considered employment under the provisions of subsection  
24 (2) of this section or the parallel provisions of another  
25 state's law, if:



1 (i) the employer's principal place of business in the  
 2 United States is located in this state;  
 3 (ii) the employer has no place of business in the United  
 4 States, but:  
 5 (A) the employer is an individual who is a resident of  
 6 this state;  
 7 (B) the employer is a corporation which is organized  
 8 under the laws of this state; or  
 9 (C) the employer is a partnership or a trust and the  
 10 number of the partners or trustees who are residents of this  
 11 state is greater than the number who are residents of any  
 12 other state; or  
 13 (iii) none of the criteria of sections (7)(a)(i) and  
 14 (7)(a)(ii) of this subsection are met but the employer has  
 15 elected coverage in this state or, the employer having  
 16 failed to elect coverage in any state, the individual has  
 17 filed a claim for benefits based on such service under the  
 18 law of this state.  
 19 (b) An "American employer", for purposes of this  
 20 subsection, means a person who is:  
 21 (i) an individual who is a resident of the United  
 22 States;  
 23 (ii) a partnership if two-thirds or more of the partners  
 24 are residents of the United States;  
 25 (iii) a trust if all of the trustees are residents of

1 the United States; or  
 2 (iv) a corporation organized under the laws of the  
 3 United States or of any state.  
 4 ~~(8) Agricultural labor exempted under 39-51-204 is~~  
 5 ~~considered employment whenever the employing unit pays~~  
 6 ~~\$20,000 or more in cash to workers for agricultural labor in~~  
 7 ~~any quarter in the current or preceding calendar year or~~  
 8 ~~employs 10 or more workers in agricultural labor on 20 days~~  
 9 ~~in 20 different weeks during the current or preceding~~  
 10 ~~calendar year if an employer, including but not limited to~~  
 11 ~~an employing unit providing outfitter and guide services, is~~  
 12 ~~otherwise subject to this chapter and has agricultural~~  
 13 ~~employment, all employees engaged in agricultural labor must~~  
 14 ~~be excluded from coverage under this chapter if the~~  
 15 ~~employer:~~  
 16 ~~(a) in any quarter or calendar year, as applicable,~~  
 17 ~~does not meet either of the tests relating to the monetary~~  
 18 ~~amount or number of employees and days worked, for the~~  
 19 ~~subject wages attributable to agricultural labor; and~~  
 20 ~~(b) keeps separate books and records to account for the~~  
 21 ~~employment of persons in agricultural labor;~~  
 22 ~~(9) Domestic service exempted under 39-51-204(1)(b) is~~  
 23 ~~considered employment whenever the employing unit pays~~  
 24 ~~\$1,000 or more in cash for domestic service in any quarter~~  
 25 ~~during the current or preceding calendar year if an~~

1 employer--is--otherwise--subject--to--this--chapter--and--has  
 2 domestic--service--employment,--all--employees--engaged---in  
 3 domestic--service--must--be--excluded--from--coverage--under--this  
 4 chapter--if--the--employer:

5 # (a)--does--not--meet--the--monetary--payment--test--in--any  
 6 quarter--or--calendar--year,--as--applicable,--for--the--subject  
 7 wages--attributable--to--domestic--service;--and

8 (b)--keeps--separate--books--and--records--to--account--for--the  
 9 employment--of--persons--in--domestic--service."

10 **Section 4.** Section 39-51-204, MCA, is amended to read:

11 "39-51-204. Exclusions from definition of employment.

12 (1) The term "employment" does not include:

13 (a) agricultural labor, except as provided in  
 14 39-51-203(8); 39-51-202(2). If an employer is otherwise  
 15 subject to this chapter and has agricultural employment, all  
 16 employees engaged in agricultural labor must be excluded  
 17 from coverage under this chapter if the employer:

18 (i) in any quarter or calendar year, as applicable,  
 19 does not meet either of the tests relating to the monetary  
 20 amount or number of employees and days worked, for the  
 21 subject wages attributable to agricultural labor; and

22 (ii) keeps separate books and records to account for the  
 23 employment of persons in agricultural labor;

24 (b) domestic service in a private home, local college  
 25 club, or local chapter of a college fraternity or sorority,

1 except as provided in 39-51-203(9); 39-51-202(3). If an  
 2 employer is otherwise subject to this chapter and has  
 3 domestic service employment, all employees engaged in  
 4 domestic service must be excluded from coverage under this  
 5 chapter if the employer:

6 (i) does not meet the monetary payment test in any  
 7 quarter or calendar year, as applicable, for the subject  
 8 wages attributable to domestic service; and

9 (ii) keeps separate books and records to account for the  
 10 employment of persons in domestic service;

11 (c) service performed as an officer or member of the  
 12 crew of a vessel on the navigable waters of the United  
 13 States;

14 (d) service performed by an individual in the employ of  
 15 that individual's son, daughter, or spouse and service  
 16 performed by a child under the age of 21 in the employ of  
 17 the child's father or mother;

18 (e) service performed in the employ of any other state  
 19 or its political subdivisions or of the United States  
 20 government or of an instrumentality of any other state or  
 21 states or their political subdivisions or of the United  
 22 States, except that national banks organized under the  
 23 national banking law shall not be entitled to exemption  
 24 under this subsection and shall be subject to this chapter  
 25 the same as state banks, provided that such service is

1 excluded from employment as defined in the Federal  
2 Unemployment Tax Act by section 3306(c)(7) of that act;

3 (f) service with respect to which unemployment  
4 insurance is payable under an unemployment insurance system  
5 established by an act of congress, provided that the  
6 department must enter into agreements with the proper  
7 agencies under such act of congress, which agreements shall  
8 become effective in the manner prescribed in the Montana  
9 Administrative Procedure Act for the adoption of rules, to  
10 provide reciprocal treatment to individuals who have, after  
11 acquiring potential rights to benefits under this chapter,  
12 acquired rights to unemployment insurance under such act of  
13 congress or who have, after acquiring potential rights to  
14 unemployment insurance under such act of congress, acquired  
15 rights to benefits under this chapter;

16 (g) services performed in the delivery and distribution  
17 of newspapers or shopping news from house to house and  
18 business establishments by an individual under the age of 18  
19 years, but not including the delivery or distribution to any  
20 point or points for subsequent delivery or distribution;

21 (h) services performed by real estate, securities, and  
22 insurance salespeople paid solely by commissions and without  
23 guarantee of minimum earnings;

24 (i) service performed in the employ of a school,  
25 college, or university if such service is performed by a

1 student who is enrolled and is regularly attending classes  
2 at such school, college, or university or by the spouse of  
3 such a student if such spouse is advised, at the time such  
4 spouse commences to perform such service, that the  
5 employment of such spouse to perform such service is  
6 provided under a program to provide financial assistance to  
7 such student by such school, college, or university and such  
8 employment will not be covered by any program of  
9 unemployment insurance;

10 (j) service performed by an individual who is enrolled  
11 at a nonprofit or public educational institution, which  
12 normally maintains a regular faculty and curriculum and  
13 normally has a regularly organized body of students in  
14 attendance at the place where its educational activities are  
15 carried on, as a student in a full-time program taken for  
16 credit at such institution which combines academic  
17 instruction with work experience if such service is an  
18 integral part of such program and such institution has so  
19 certified to the employer, except that this subsection shall  
20 not apply to service performed in a program established for  
21 or on behalf of an employer or group of employers;

22 (k) service performed in the employ of a hospital if  
23 such service is performed by a patient of the hospital;

24 (l) services performed by a cosmetologist who is  
25 licensed under Title 37, chapter 31, or a barber who is

1 licensed under Title 37, chapter 30, and who has  
 2 acknowledged in writing that he is not covered by  
 3 unemployment insurance and workers' compensation and who  
 4 contracts with a cosmetological establishment as defined in  
 5 37-31-101 or a barbershop as defined in 37-30-101, which  
 6 contract shall show the cosmetologist or barber is free from  
 7 all control and direction of the owner in the contract and  
 8 in fact; receives payment for services from his or her  
 9 individual clientele; leases, rents, or furnishes all of his  
 10 or her own equipment, skills, or knowledge; and whose  
 11 contract gives rise to an action for breach of contract in  
 12 the event of contract termination (the existence of a single  
 13 license for the cosmetological establishment or barbershop  
 14 shall not be construed as a lack of freedom from control or  
 15 direction under this subsection);

16 (m) casual labor not in the course of an employer's  
 17 trade or business performed in any calendar quarter, unless  
 18 the cash remuneration paid for such service is \$50 or more  
 19 and such service is performed by an individual who is  
 20 regularly employed by such employer to perform such service.  
 21 "Regularly employed" means the services are performed during  
 22 at least 24 days in the same quarter.

23 (n) services performed for the installation of floor  
 24 coverings if the installer:

25 (i) bids or negotiates a contract price based upon work

1 performed by the yard or by the job;  
 2 (ii) is paid upon completion of an agreed upon portion  
 3 of the job or after the job is completed;  
 4 (iii) may perform services for anyone without  
 5 limitation;  
 6 (iv) may accept or reject any job;  
 7 (v) furnishes substantially all tools and equipment  
 8 necessary to provide the services; and  
 9 (vi) works under a written contract that:  
 10 (A) gives rise to a breach of contract action if the  
 11 installer or any other party fails to perform the contract  
 12 obligations;  
 13 (B) states the installer is not covered by unemployment  
 14 insurance; and  
 15 (C) requires the installer to provide a current  
 16 workers' compensation policy or to obtain an exemption from  
 17 workers' compensation requirements.  
 18 (2) "Employment" does not include elected public  
 19 officials.  
 20 (3) For the purposes of 39-51-203(6), the term  
 21 "employment" does not apply to service performed:  
 22 (a) in the employ of a church or convention or  
 23 association of churches or an organization which is operated  
 24 primarily for religious purposes and which is operated,  
 25 supervised, controlled, or principally supported by a church

1 or convention or association of churches;

2 (b) by a duly ordained, commissioned, or licensed  
3 minister of a church in the exercise of the church's  
4 ministry or by a member of a religious order in the exercise  
5 of duties required by such order;

6 (c) in a facility conducted for the purpose of carrying  
7 out a program of rehabilitation for individuals whose  
8 earning capacity is impaired by age or physical or mental  
9 deficiency or injury or providing remunerative work for  
10 individuals who, because of their impaired physical or  
11 mental capacity, cannot be readily absorbed in the  
12 competitive labor market by an individual receiving such  
13 rehabilitation or remunerative work;

14 (d) as part of an unemployment work-relief or  
15 work-training program assisted or financed in whole or in  
16 part by a federal agency or any agency of a state or  
17 political subdivision thereof by an individual receiving  
18 such work relief or work training; or

19 (e) for a state prison or other state correctional or  
20 custodial institution by an inmate of that institution."

21 **Section 5.** Section 39-51-206, MCA, is amended to read:

22 "39-51-206. Agricultural labor -- who treated as  
23 employer of member of a crew furnished by a crew leader. (1)  
24 For the purposes of 39-51-203, any individual who is a  
25 member of a crew furnished by a crew leader to perform

1 service in agricultural labor for any other person shall be  
2 treated as an employee of such crew leader if:

3 (a) such crew leader holds a valid certificate of  
4 registration under the Migrant and Seasonal Agricultural  
5 Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);  
6 or

7 (b) (i) substantially all the members of such crew  
8 operate or maintain tractors, mechanized harvesting or  
9 cropdusting equipment, or any other mechanized equipment  
10 which is provided by such crew leader; and

11 (ii) such individual is not an employee of such other  
12 person ~~within the meaning of 39-51-202(1), 39-51-203(8), or~~  
13 39-51-203(9) for whom services in agricultural labor are  
14 performed.

15 (2) In the case of any individual who is furnished by a  
16 crew leader to perform service in agricultural labor for any  
17 other person and who is not treated as an employee of such  
18 crew leader under subsection (1):

19 (a) such other person and not the crew leader shall be  
20 treated as the employer of such individual; and

21 (b) such other person shall be treated as having paid  
22 cash remuneration to such individual in an amount equal to  
23 the amount of cash remuneration paid to such individual by  
24 the crew leader, either on his own behalf or on behalf of  
25 such other person, for the service in agricultural labor

1 performed for such other person.

2 (3) The term "crew leader" means an individual who:

3 (a) furnishes individuals to perform service in  
4 agricultural labor for any other person;

5 (b) pays, either on his own behalf or on behalf of such  
6 other person, the individuals so furnished by him for the  
7 service in agricultural labor performed by them; and

8 (c) has not entered into a written agreement with such  
9 other person under which such individual is designated as an  
10 employee of such other person."

11 **Section 6.** Section 39-51-602, MCA, is amended to read:

12 "39-51-602. Method to be used by department in keeping  
13 wage records. Wage records kept by the department for the  
14 purposes of this chapter shall must be kept on the basis of  
15 wages paid, except that for the purposes of determining  
16 benefit eligibility and the amount and duration of benefits  
17 payable, wages, including lump-sum payments of accrued  
18 wages, must be assigned to periods of time as determined in  
19 accordance with rules adopted by the department."

20 **Section 7.** Section 39-51-603, MCA, is amended to read:

21 "39-51-603. **Employing unit to keep records and make**  
22 **reports.** (1) Each employing unit shall keep true and  
23 accurate work records containing such information as the  
24 department may prescribe. Those records shall be open to  
25 inspection and audit and shall be subject to being copied by

1 the department or its authorized representative at any  
2 reasonable time and as often as may be necessary.

3 (2) The department and the chairman of any appeal  
4 tribunal may require from any employing unit any sworn or  
5 unsworn reports with respect to persons employed by it which  
6 the department considers necessary to the effective  
7 administration of this chapter.

8 (3) Information thus obtained or obtained from any  
9 individual under this chapter shall, except to the  
10 individual claimant to the extent necessary for the proper  
11 presentation of a claim, be held confidential and shall not  
12 be published or be open to public inspection, except to  
13 public employees in the performance of their public duties,  
14 in any manner revealing the individual's or employing unit's  
15 identity, but any claimant or his legal representative at a  
16 hearing before the board or appeal tribunal shall be  
17 supplied with information from the records to the extent  
18 necessary for the proper presentation of his claim.

19 (4) Any employee or member of the department who  
20 violates any provision of this section shall be fined not  
21 less than \$20 or more than \$200 or imprisoned for not longer  
22 than 90 days or both."

23 **Section 8.** Section 39-51-1101, MCA, is amended to read:

24 "39-51-1101. **Commencement and termination of coverage**  
25 **under chapter.** (1) Any employing unit which is or becomes an

1 employer subject to this chapter within any calendar year  
2 shall be subject to this chapter during the whole of such  
3 calendar year, except that this subsection shall not apply  
4 to an employing unit electing coverage as provided for in  
5 39-51-1102.

6 (2) Except as otherwise provided in 39-51-1102, an  
7 employing unit shall cease to be an employer subject to this  
8 chapter only as of January 1 of any calendar year only if it  
9 files with the department prior to the last day of February  
10 of such year a written application for termination of  
11 coverage and the department finds that the total wages  
12 payable for employment by said employer in the preceding  
13 calendar year did not equal or exceed \$17,000 the amount of  
14 wages required under 39-51-202 to be considered an employer  
15 subject to this chapter. For the purpose of this subsection,  
16 the two or more employing units mentioned in ~~subsection-(2)~~  
17 ~~or-(3)-of 39-51-202(4) or (5)~~ shall be treated as a single  
18 employing unit."

19 **Section 9.** Section 39-51-1104, MCA, is amended to read:

20 "39-51-1104. Duty and liability of contractor and  
21 subcontractor, respectively, in regard to contributions  
22 taxes, penalties, and interest owed by subcontractor. (1)  
23 Any contractor who is or becomes an employer under the  
24 provisions of this chapter who contracts with any  
25 subcontractor who also is or becomes an employer under the

1 provisions of this chapter shall withhold sufficient money  
2 on the contract to guarantee that all contributions taxes,  
3 penalties, and interest are paid upon completion of the  
4 contract.

5 (2) It shall be the duty of any subcontractor who is or  
6 becomes an employer under the provisions of this chapter to  
7 furnish the contractor with a certification issued by the  
8 department, prior to final payment for the particular job,  
9 stating that said subcontractor is current and in full  
10 compliance with the provisions of this chapter.

11 (3) Failure to comply with the provisions of this  
12 section shall render the contractor directly liable for all  
13 contributions taxes, penalties, and interest due from the  
14 subcontractor on the particular job, and the administrator  
15 has all of the remedies of collection against the contractor  
16 under the provisions of this chapter as though the services  
17 in question were performed directly for the contractor."

18 **Section 10.** Section 39-51-1105, MCA, is amended to  
19 read:

20 "39-51-1105. Liability of corporate officers for  
21 contributions taxes, penalties, and interest owed by  
22 corporation. When a corporation subject to Montana corporate  
23 law has failed to file the annual corporation report with  
24 the Montana secretary of state as required by law the  
25 department shall hold the president, vice-president,

1 secretary, and treasurer jointly and severally liable for  
 2 any contributions taxes, penalties, and interest due for the  
 3 period in which the corporation is delinquent in filing the  
 4 annual corporation report. If the required annual  
 5 corporation report is made and filed after the time  
 6 specified, such officers may not, on account of prior  
 7 failure to make report, be held liable for the contributions  
 8 taxes, PENALTIES, AND INTEREST thereafter accruing."

9 **Section 11.** Section 39-51-1110, MCA, is amended to  
 10 read:

11 "39-51-1110. Refunds to employers. (1) If not later  
 12 than 3 years after the date on which any contributions taxes  
 13 or interest thereon became due or not later than 1 year from  
 14 the date on which payment was made, whichever is later, an  
 15 employer who has paid such contributions taxes or interest  
 16 thereon shall make application for an adjustment thereof in  
 17 connection with subsequent contribution tax payments or for  
 18 a refund thereof because such adjustment cannot be made and  
 19 the department shall determine that such contributions taxes  
 20 or interest or any portion thereof was erroneously  
 21 collected, the department shall allow such employer to make  
 22 an adjustment thereof, without interest, in connection with  
 23 subsequent contribution tax payments by him or, if such  
 24 adjustment cannot be made, the department shall refund said  
 25 amount, without interest, from the fund. For like cause and

1 within the same period, adjustment or refund may be so made  
 2 on the department's own initiative.

3 (2) If the department shall determine that an employer  
 4 has paid contributions taxes to this state under this  
 5 chapter when such contributions taxes should have been paid  
 6 to another state under a similar act of such other state,  
 7 transfer of such contributions taxes to such other state  
 8 shall be made upon discovery or, upon proof of payment that  
 9 such other state has been fully paid, then refund to such  
 10 employer shall be made at any time upon application without  
 11 limitation of time.

12 (3) In the event that this chapter is not certified by  
 13 the secretary of labor under section 1603 of the Internal  
 14 Revenue Code, as amended, 1939, for any year, then and in  
 15 that event refunds shall be made of all contributions taxes  
 16 required under this chapter from employers for that year."

17 **Section 12.** Section 39-51-1301, MCA is amended to read:

18 "39-51-1301. (Effective July 1, 1991) Penalty and  
 19 interest on past-due contributions taxes. (1) Contributions  
 20 Taxes unpaid on the date on which they are due and payable,  
 21 as provided by subsections (1) and (2) of 39-51-1103 and  
 22 39-51-1125, that are paid by the end of the month following  
 23 the due date shall be subject to a penalty assessment of \$10  
 24 or 10% of the contribution tax due, whichever is greater. If  
 25 the contributions taxes are not paid by the end of the month



1 following the due date, the employer shall be subject to a  
 2 penalty assessment of \$15 or 15% of the contributions taxes  
 3 due, whichever is greater. All past-due contributions taxes  
 4 shall bear interest at the rate of 18% a year, to be  
 5 prorated on a daily basis.

6 (2) A penalty of \$40 shall be assessed whenever, as the  
 7 result of a willful refusal of an employer to furnish wage  
 8 information or pay contributions taxes on time, the  
 9 department issues a subpoena to obtain wage information or  
 10 makes a summary or jeopardy assessment pursuant to  
 11 39-51-1302.

12 (3) Interest and penalties collected pursuant to this  
 13 section shall be paid into the unemployment insurance trust  
 14 fund.

15 (4) When failure to pay contributions taxes on time was  
 16 not caused by willful intent of the employer, the department  
 17 may abate the penalty and interest.

18 (5) All money accruing to the unemployment insurance  
 19 trust fund from interest and penalties collected on past-due  
 20 contributions taxes must be used solely for the payment of  
 21 unemployment insurance benefits and may not be used for any  
 22 other purpose."

23 **Section 13.** Section 39-51-1302, MCA, is amended to  
 24 read:

25 "**39-51-1302. Summary or jeopardy assessment of unpaid**

1 contributions taxes. (1) If any employer fails to file a  
 2 report or return as required under this chapter or the  
 3 regulations of the department adopted thereunder within the  
 4 time specified or if the employer's records are inaccurate  
 5 or are incomplete when an employer has already filed a  
 6 quarterly wage report for the period in question, the  
 7 department may make a summary or jeopardy assessment of the  
 8 amount due by making up such report and determining the  
 9 amount of contributions taxes due and owing to the fund upon  
 10 the basis of such information as the department may be able  
 11 to obtain, and thereupon the same shall be collected the  
 12 same as other reports and contributions taxes due, with  
 13 penalty and interest as provided in this chapter.

14 (2) Upon making such summary or jeopardy assessment,  
 15 the department shall immediately notify the employer in  
 16 writing by personal service or by certified or--registered  
 17 mail in the usual course at the last known principal place  
 18 of business operated by the employer. Such assessment shall  
 19 be final unless the employer shall protest such assessment  
 20 in writing within 15 days after service of the notice or,  
 21 within the same period of time, the employer shall file a  
 22 correct, signed, and sworn report and statement as provided  
 23 by the chapter and the regulations of the department.

24 (3) Upon written protest being filed as above set  
 25 forth, a day certain for the hearing thereof shall be fixed

1 by the department and notice thereof mailed to the employer,  
 2 At such hearing, the facts ascertained by the department  
 3 shall be conclusive and the department may upon the basis of  
 4 such facts ascertained assess the amount due, modify, set  
 5 aside, or revise the prior assessment and require the  
 6 employer to pay the amount due with penalty and interest as  
 7 provided for in this chapter. A copy of the decision of the  
 8 department and the assessment of the amount due shall be  
 9 mailed to the employer at his last known principal place of  
 10 business and thereupon become final."

11 **Section 14.** Section 39-51-1303, MCA, is amended to  
 12 read:

13 "39-51-1303. Collection of unpaid contributions taxes  
 14 by civil action. (1) If, after due notice, any employer  
 15 defaults in any payment of contributions taxes, penalties,  
 16 or interest thereon, the department may at its discretion  
 17 initiate a civil action in the name of the Montana  
 18 department of labor and industry to collect the amount due,  
 19 and the employer adjudged in default shall pay the costs of  
 20 such action.

21 (2) An action for the collection of contributions taxes  
 22 due must be brought within 5 years after the due date of  
 23 such contributions taxes or it is barred.

24 (3) The department may pursue its remedy under either  
 25 this section or 39-51-1304, or both."

1 **Section 15.** Section 39-51-1304, MCA, is amended to  
 2 read:

3 "39-51-1304. Lien for payment of unpaid contributions  
 4 and assessments taxes -- levy and execution. (1) Unpaid  
 5 contributions--and--assessments--under--39-51-404(4) taxes,  
 6 including penalties and interest assessed thereon, have the  
 7 effect of a judgment against the employer, arising at the  
 8 time such payments are due. The department may issue a  
 9 certificate setting forth the amount of payments due and  
 10 directing the clerk of the district court of any county of  
 11 the state to enter the certificate as a judgment in the  
 12 docket pursuant to 25-9-301. From the time the judgment is  
 13 docketed, it becomes a lien upon all real and personal  
 14 property of the employer. ~~From--the--time--the--judgment--is~~  
 15 ~~filed--with--the--secretary--of--state--or--a--registrar--of--personal~~  
 16 ~~property--specifically--describing--the--personal--property,--it~~  
 17 ~~becomes--a--lien--upon--personal--property--of--the--employer.~~ After  
 18 the due process requirements of 39-51-1109 and 39-51-2403  
 19 have been satisfied, the department may enforce the judgment  
 20 pursuant to Title 25, chapter 13, except that the department  
 21 may enforce the judgment at any time within 10 years of the  
 22 creation of the lien.

23 (2) The lien provided for in subsection (1) is not  
 24 valid against any third party owning an interest in real or  
 25 personal property against which the judgment is enforced if:

1 (a) the third party's interest is recorded prior to the  
2 entrance of the certificate as a judgment; and

3 (b) the third party receives from the most recent  
4 grantor of the interest a signed affidavit stating that all  
5 ~~contributions,--assessments~~ taxes, penalties, and interest  
6 due from the grantor have been paid.

7 (3) A grantor who signs and delivers an affidavit is  
8 subject to the penalties imposed by 39-51-3204 if any part  
9 of it is untrue. Notwithstanding the provisions of  
10 39-51-3204, the department may proceed against the employer  
11 under this section or 39-51-1303, or both, to collect the  
12 delinquent ~~contributions,--assessments~~ taxes, penalties, and  
13 interest.

14 (4) The lien provided for in subsection (1) must be  
15 released upon payment in full of the unpaid taxes,  
16 penalties, and accumulated interest. The department may  
17 release or may partially release the lien upon partial  
18 payment or whenever the department determines that the  
19 release or partial release of the lien will facilitate the  
20 collection of unpaid taxes, penalties, or interest. The  
21 department may release the lien if it determines that the  
22 lien is unenforceable."

23 **Section 16.** Section 39-51-1305, is amended to read:

24 "39-51-1305. Priority of payment of contributions taxes  
25 due under legal dissolutions or distributions. In the event

1 of any distribution of an employer's assets pursuant to an  
2 order of any court under the laws of this state, including  
3 any receivership, assignment for benefit of creditors,  
4 adjudicated insolvency, composition, or similar proceeding,  
5 contributions taxes then or thereafter due shall be paid in  
6 full prior to all other claims, except taxes and claims for  
7 wages of not more than \$250 to each claimant earned within 6  
8 months of the commencement of the proceeding."

9 **Section 17.** Section 39-51-1306, MCA, is amended to  
10 read:

11 "39-51-1306. Reciprocity with other states for  
12 collection of unpaid contributions taxes. (1) The courts of  
13 this state shall recognize and enforce liabilities for  
14 unemployment contributions taxes and any other special  
15 assessments imposed by other states which extend a like  
16 comity to this state.

17 (2) The department is hereby empowered to sue in the  
18 courts of any other jurisdiction which extends such comity  
19 to collect unemployment contributions taxes, penalties, and  
20 interest due this state. The officials of other states which  
21 by statute or otherwise extend a like comity to this state  
22 may sue in the courts of this state to collect for such  
23 contributions taxes and any other special assessments and  
24 interest and penalties, if any, due such state. In any such  
25 case the administrator may through his attorney or attorneys

1 institute and conduct such suit for such other state.

2 (3) Venue of such proceedings shall be the same as for  
3 actions to collect delinquent contributions taxes,  
4 penalties, and interest due under this chapter.

5 (4) A certificate by the secretary of any such state  
6 under the great seal of such state attesting the authority  
7 of such official or officials to collect unemployment  
8 insurance contributions taxes and other special assessments,  
9 penalties, and interest shall be conclusive evidence of such  
10 authority."

11 **Section 18.** Section 39-51-2110, MCA, is amended to  
12 read:

13 "**39-51-2110. Payment of benefits to aliens.** (1)  
14 ~~Effective January 17, 1978, benefits~~ Benefits shall not be  
15 ~~paid payable~~ on the basis of services performed by an alien  
16 unless such the alien is an individual who ~~has been was~~  
17 lawfully admitted for permanent residence at the time the  
18 services were performed, was lawfully present for the  
19 purposes of performing the services, or otherwise is was  
20 permanently residing in the United States under color of  
21 law at the time the services were performed, including an  
22 alien who is was lawfully present in the United States as a  
23 result of the application of the provisions of section  
24 203(a)(7) or section 212(d)(5) of the Immigration and  
25 Nationality Act.

1 (2) Any data or information required of individuals  
2 applying for benefits to determine whether benefits are not  
3 payable to them because of their alien status shall be  
4 uniformly required from all applicants for benefits.

5 (3) In the case of an individual whose application for  
6 benefits would otherwise be approved, no determination that  
7 benefits to such individual are not payable because of his  
8 alien status shall be made except upon a preponderance of  
9 the evidence."

10 ~~Section 19, Section 39-51-2509, MCA, is amended to~~  
11 ~~read:~~

12 ~~39-51-2509. Weekly extended benefit amount. (1) The~~  
13 ~~weekly extended benefit amount payable to an individual for~~  
14 ~~a week of total unemployment in his eligibility period shall~~  
15 ~~be an amount equal to the weekly benefit amount, except as~~  
16 ~~provided in subsection (2).~~

17 ~~(2) For any week during a period in which federal~~  
18 ~~payments to this state under section 204 of the~~  
19 ~~Federal State Extended Unemployment Compensation Act of 1970~~  
20 ~~are reduced under an order issued under section 252 of the~~  
21 ~~Balanced Budget and Emergency Deficit Control Act of 1985,~~  
22 ~~the weekly extended benefit amount payable to an individual~~  
23 ~~for a week of total unemployment in his eligibility period~~  
24 ~~must be reduced by a percentage equivalent to the percentage~~  
25 ~~of the reduction in the federal payment. The reduced weekly~~

~~extended benefit amount, if not a full dollar amount, must be rounded to the nearest lower full dollar amount, payable to him during his applicable benefit year.~~"

~~Section 20, Section 39-51-2510, MCA, is amended to read:~~

~~"39-51-2510. Total extended benefit amount. The (1) Except as provided in subsection (2), the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:~~

~~(1)(a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;~~

~~(2)(b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.~~

~~(2) During any fiscal year in which federal payments to this state under section 204 of the Federal State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his applicable benefit year must be reduced by an amount equal to the aggregate of the reductions under 39-51-2509 in the weekly amounts paid to the individual."~~

**Section 19.** Section 39-51-2602, MCA, is amended to read:

**"39-51-2602.** Approved trade readjustment training under federal programs. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974, or under Title III of the federal Job Training Partnership Act;

(b) in which he is because of participation in such approved training described in subsection (1)(a) by reason of leaving work to enter such the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal

1 Trade Act of 1974 and the federal Job Training Partnership  
2 Act."

3 Section 20. Section 39-51-1121, MCA, is amended to  
4 read:

5 "39-51-1121. Definitions. As used in this part and part  
6 12, the following definitions apply:

7 (1) "Computation date" means the reporting period  
8 ending September 30 preceding the calendar year for which a  
9 covered employer's contribution rate is effective.

10 (2) "Cutoff date" means ~~December 31~~ November 30 OCTOBER  
11 31 immediately following the computation date. The  
12 department may extend the cutoff date in meritorious cases.

13 (3) "Deficit employer" means an employer who is subject  
14 under this chapter and who has established a record of  
15 accumulated benefits charged to the employer's account in  
16 excess of the employer's accumulated contributions paid as  
17 of the cutoff date.

18 ~~(4) "Department" means the department of labor and~~  
19 ~~industry.~~

20 ~~(5) (4)~~ "Eligible employer" means an employer who has  
21 been subject under this chapter for the 3 fiscal years  
22 immediately preceding the computation date and who has:

23 ~~(a) filed all contribution reports prescribed by the~~  
24 ~~department;~~

25 ~~(b) paid all contributions and all assessments under~~

1 ~~39-51-404(4) and penalties and interest thereon;~~

2 ~~(c) (a)~~ established a record of accumulated  
3 contributions in excess of benefits charged to the  
4 employer's account; and

5 ~~(d) (b)~~ paid wages in at least 1 of the 8 calendar  
6 quarters preceding the computation date.

7 ~~(6) (5)~~ "Fiscal year" means the four consecutive  
8 calendar quarters ending on September 30.

9 ~~(7) (6)~~ "Governmental entities" means the state or any  
10 political subdivision of the state or an instrumentality of  
11 the state or a political subdivision, including any  
12 employing unit funded directly by tax levies.

13 ~~(7)~~ "New employer" means an employer who:

14 ~~(a) has not been subject to the provisions of this~~  
15 ~~chapter for the 3 fiscal years immediately preceding the~~  
16 ~~computation date; and~~

17 ~~(b) has established a record of accumulated~~  
18 ~~contributions in excess of benefits charged to the~~  
19 ~~employer's account.~~

20 (8) "Taxable wage base" means the amount of wages  
21 subject to contributions and to assessments under  
22 39-51-404(4) for each calendar year. Payment of  
23 contributions and of assessments under 39-51-404(4) may  
24 apply only to wages paid up to and including the amount  
25 specified in 39-51-1108.

~~(9) -- "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."~~

**Section 21.** Section 39-51-1125, MCA, is amended to read:

"39-51-1125. Computation of payments in lieu of contributions. (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such

employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

**Section 22.** Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's

1 account for all past periods which are completed  
2 transactions by December 31 by total wages from date of  
3 subjectivity of the employing unit through December 31; and

4 (b) the benefit cost for all past years of governmental  
5 entities electing to pay contributions compared with total  
6 payrolls reported for all past years by these governmental  
7 entities used as a median, with the rates so fixed using the  
8 median that the rates will, when applied to the total annual  
9 payroll for subject governmental entities, yield total paid  
10 contributions equaling approximately the total benefit  
11 costs.

12 (3) New governmental entities electing to pay  
13 contributions shall be assigned the median rate for the year  
14 in which they become subject.

15 (4) At no time may the minimum rate be less than 0.1%  
16 or the maximum rate be greater than 1.5%. The rates are to  
17 be graduated at one-tenth intervals.

18 (5) In the event benefit charges exceed contributions  
19 paid in the last 2 completed fiscal years, governmental  
20 entities' rates will be adjusted by increasing all rates to  
21 the next higher schedule.

22 (6) The computed rate is effective July 1 of each year.

23 (7) Governmental entities must be charged for their  
24 share of the total benefits paid to a claimant if the  
25 governmental entity contributed wages during the claimant's

1 base period. The benefit charged must be based on the  
2 percentage of wages paid by the governmental entity as  
3 compared to the total wages paid by all employers in the  
4 claimant's base period.

5 (8) A payment may not be required under this section  
6 with respect to benefits paid to an individual if the  
7 governmental employer continues to provide employment to the  
8 individual with no reduction in hours or wages."

9 **Section 23.** Section 39-51-1213, MCA, is amended to  
10 read:

11 **"39-51-1213. Classification of employers for experience**  
12 **rating purposes.** (1) The department shall for each calendar  
13 year classify employers in accordance with their actual  
14 experience in the payment of contributions and with respect  
15 to benefits charged against their accounts, with  
16 contribution rates reflecting benefit experience. Each  
17 employer's rate for a calendar year shall be determined on  
18 the basis of the employer's record as of October 1 of the  
19 preceding calendar year.

20 (2) In making the classification, each eligible and  
21 deficit employer's contribution rate is determined in the  
22 manner set forth below:

23 (a) Each employer is given an "experience factor" which  
24 is contributions paid since October 1, 1981, minus benefits  
25 charged on each employer's account since October 1, 1981,



1 divided by the employer's average annual taxable payroll  
 2 rounded to the next lower dollar amount for the 3 fiscal  
 3 years immediately preceding the computation date. The  
 4 computation of the "experience factor" shall be to six  
 5 decimal places.

6 (b) Schedules shall be prepared listing all eligible  
 7 and deficit employers in inverse numerical order of their  
 8 experience factors. There shall be listed on such schedules  
 9 for each employer in addition to the experience factor:

10 (i) the amount of the employer's taxable payroll for  
 11 the fiscal year ending on the computation date; and

12 (ii) the cumulative total consisting of the sum of the  
 13 employer's taxable payroll for the fiscal year ending on the  
 14 computation date and the corresponding taxable payrolls for  
 15 all other employers preceding that employer on the  
 16 schedules.

17 (3) The cumulative taxable payroll amounts listed on  
 18 the schedules provided for in 39-51-1218 shall be segregated  
 19 into groups that will yield approximately the average tax  
 20 rate according to the tax schedule assigned for that  
 21 particular taxable year. Each group shall be identified by  
 22 the rate class number listed in the table which represents  
 23 the percentage limits of each group. Each employer on the  
 24 schedules is assigned that contribution rate opposite that  
 25 employer's rate class for the tax schedule in effect for the

1 taxable year.

2 (4) (a) If the grouping of rate classes requires the  
 3 inclusion of exactly one-half of an employer's taxable  
 4 payroll, the employer is assigned the lower of the two rates  
 5 designated for the two classes in which the halves of that  
 6 employer's taxable payroll are so required.

7 (b) If the group of rate classes requires the inclusion  
 8 of a portion other than exactly one-half of an employer's  
 9 taxable payroll, the employer is assigned the rate  
 10 designated for the class in which the greater part of that  
 11 employer's taxable payroll is so required.

12 (c) If one or more employers on the schedules have  
 13 experience factors identical to that of the last employer  
 14 included in a particular rate class, all such employers are  
 15 included in and assigned the contribution rate specified for  
 16 such class, notwithstanding the provisions of 39-51-1214.

17 (5) If the taxable payroll amount or the experience  
 18 factor or both such taxable payroll amount and experience  
 19 factor of any eligible or deficit employer listed on the  
 20 schedules is changed, the employer is placed in that  
 21 position on the schedules which the employer would have  
 22 occupied had that employer's taxable payroll amount or  
 23 experience factor as changed been used in determining that  
 24 employer's position in the first instance, but such change  
 25 does not affect the position or rate classification of any

1 other employer listed on the schedules and does not affect  
2 the rate determination for previous years.

3 (6) ~~Deficit--employers~~ An employer who ~~have~~ has not  
4 filed all required payroll reports or paid all contributions  
5 taxes, penalties, and interest due by the cutoff date must  
6 be assigned the maximum contribution rate in effect for the  
7 taxable year for his classification as an eligible, deficit,  
8 or new employer."

9 **Section 24.** Section 39-51-1214, MCA, is amended to  
10 read:

11 "**39-51-1214. Benefit payments chargeable to employer**  
12 **experience rating accounts.** (1) Except for cost  
13 reimbursement, benefits paid shall be charged to the account  
14 of each of the claimant's base period employers. The benefit  
15 charged must be based on the percentage of wages paid by the  
16 employer as compared to the total wages paid by all  
17 employers in the claimant's base period.

18 (2) No charge shall be made to the account of such  
19 covered employer with respect to benefits paid under the  
20 following situations:

21 (a) if paid to a worker who terminated his services  
22 voluntarily without good cause attributable to such covered  
23 employer or who had been discharged for misconduct in  
24 connection with such services;

25 (b) if paid in accordance with the extended benefit

1 program triggered by either national or state indicators; or

2 (c) if the base period employer continues to provide  
3 employment with no reduction in hours or wages; or

4 (d) if benefits are paid to claimants who are in  
5 training approved under 39-51-2307."

6 **Section 25.** Section 39-51-1217, MCA, is amended to  
7 read:

8 "**39-51-1217. Schedule of rates assigned based on trust**  
9 **fund reserve.** (1) The rate schedule for each calendar year  
10 is assigned based upon the ratio of the trust fund balance  
11 as of ~~December-31~~ November-30 OCTOBER 31 prior to the rate  
12 year to total wages in covered employment for the 12-month  
13 period ending June 30 prior to the computation date.

14 (2) The ratio at the top of each tax schedule in the  
15 tax table shown in 39-51-1218 represents the minimum fund  
16 level required for a specific tax schedule to be in effect.

17 (3) Employer rates are assigned in accord with the  
18 rates provided in each schedule for eligible; ~~--unrated;~~ and  
19 deficit employers, based upon their experience as defined in  
20 this section.

21 (4) For the calendar year 1990 and each year  
22 thereafter, any employer classified as unrated a new  
23 employer must be assigned a rate equal to the average rate  
24 of contributions paid by employers in the same major  
25 industrial classification for the calendar year preceding

1 the computation date, plus an adjustment for the difference  
 2 between the average tax rate assigned for the previous  
 3 calendar year and the average rate in effect for the current  
 4 calendar year. At no time may an unrated a new employer be  
 5 assigned a rate lower than 1%. The computation of the  
 6 average rate of contributions in a major industrial  
 7 classification must exclude those employer accounts that are  
 8 not eligible for the computation of an experience rating  
 9 solely by reason of insufficient experience. The department  
 10 shall develop the major industrial classifications for the  
 11 state and shall annually determine the contribution rate for  
 12 each classification."

13 **Section 26.** Section 39-51-1218, MCA, is amended to  
 14 read:

15 "39-51-1218. Rate schedules.

16 SCHEDULES OF CONTRIBUTION RATES -- Part I

	Sched.	Sched.	Sched.	Sched.
	I	II	III	IV
17				
18				
19				
20				
21				
22				
23				

Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%

1	2	0.1	0.3	0.5	0.7
2	3	0.3	0.5	0.7	0.9
3	4	0.5	0.7	0.9	1.1
4	5	0.7	0.9	1.1	1.3
5	6	0.9	1.1	1.3	1.5
6	7	1.1	1.3	1.5	1.7
7	8	1.3	1.5	1.7	1.9
8	9	1.5	1.7	1.9	2.1
9	10	1.7	1.9	2.1	2.3

10 **Contribution-Rates-For-Unrated-Employers**  
 11 ~~2.0%~~ ~~2.2%~~ ~~2.4%~~ ~~2.6%~~

Rate Class	Contribution Rates For Deficit Employers				
12					
13	1	3.2%	3.4%	3.6%	3.8%
14	2	3.4	3.6	3.8	4.0
15	3	3.6	3.8	4.0	4.2
16	4	3.8	4.0	4.2	4.4
17	5	4.0	4.2	4.4	4.6
18	6	4.2	4.4	4.6	4.8
19	7	4.4	4.6	4.8	5.0
20	8	4.6	4.8	5.0	5.2
21	9	4.8	5.0	5.2	5.4
22	10	6.4	6.4	6.4	6.4

1           **SCHEDULES OF CONTRIBUTION RATES -- Part II**

2           **Sched.    Sched.    Sched.    Sched.    Sched.    Sched.**

3           **V            VI           VII           VIII          IX           X**

4           **(.0170)   (.0135)   (.0095)   (.0075)   (.0050)   (.....)**

5           **2.2        2.4        2.6        2.8        3.0        3.2**

6           **Contribution Rates For Eligible Employers**

7           **0.7%      0.9%      1.1%      1.3%      1.5%      1.7%**

8           **0.9       1.1       1.3       1.5       1.7       1.9**

9           **1.1       1.3       1.5       1.7       1.9       2.1**

10           **1.3       1.5       1.7       1.9       2.1       2.3**

11           **1.5       1.7       1.9       2.1       2.3       2.5**

12           **1.7       1.9       2.1       2.3       2.5       2.7**

13           **1.9       2.1       2.3       2.5       2.7       2.9**

14           **2.1       2.3       2.5       2.7       2.9       3.1**

15           **2.3       2.5       2.7       2.9       3.1       3.3**

16           **2.5       2.7       2.9       3.1       3.3       3.5**

17           **Contribution Rates For Unrated Employers**

18           **2.0%      2.0%      2.2%      2.4%      2.6%      2.8%**

19           **Contribution Rates For Deficit Employers**

20           **4.0%      4.2%      4.4%      4.6%      4.8%      5.0%**

1           **4.2       4.4       4.6       4.8       5.0       5.2**

2           **4.4       4.6       4.8       5.0       5.2       5.4**

3           **4.6       4.8       5.0       5.2       5.4       5.6**

4           **4.8       5.0       5.2       5.4       5.6       5.8**

5           **5.0       5.2       5.4       5.6       5.8       6.0**

6           **5.2       5.4       5.6       5.8       6.0       6.2**

7           **5.4       5.6       5.8       6.0       6.2       6.4**

8           **5.6       5.8       6.0       6.2       6.4       6.4**

9           **6.4       6.4       6.4       6.4       6.4       6.4"**

10           **Section 27.** Section 39-51-3201, MCA, is amended to  
 11 read:

12           **"39-51-3201. Making false statement or representation**  
 13 **or failing to disclose material fact in order to obtain or**  
 14 **increase benefits -- administrative penalty and remedy. (1)**  
 15 A person who makes a false statement or representation  
 16 knowing it to be false or knowingly fails to disclose a  
 17 material fact in order to obtain or increase any benefit or  
 18 other payment under this chapter or under an employment  
 19 security law of any other state or territory or the federal  
 20 government, either for himself or for any other person, is:  
 21           **(1)(a)** disqualified for benefits thereafter for a  
 22 period of not more than 52 weeks, beginning with the first  
 23 compensable week following the date of such determination by  
 24 the department, the length of time of the disqualification  
 25 as herein described to be determined by the department in

1 accordance with the severity of each case; and

2 ~~(2)(b)~~ required to repay to the department, either  
 3 directly or as authorized by the department, by offset of  
 4 future benefits to which he may be entitled, or by a  
 5 combination of both such methods, a sum equal to the amount  
 6 wrongfully received by him, ~~plus interest at the rate of 18%~~  
 7 ~~a year computed from the time the false statement or~~  
 8 ~~representation or the failure to disclose a material fact~~  
 9 ~~occurred, except that future benefits may not be used to~~  
 10 ~~offset the interest due. THE DEPARTMENT MAY ASSESS a penalty~~  
 11 ~~equivalent to 33% NOT TO EXCEED 100% of the fraudulently~~  
 12 ~~obtained benefits, except that future benefits may not be~~  
 13 ~~used to offset the penalty due.~~ However, he is not required  
 14 to repay any amount wrongfully obtained more than 5 years  
 15 prior to the date of the department's determination that he  
 16 made false statements, willful nondisclosure, or  
 17 misrepresentation.

18 (2) All money accruing from the penalty under  
 19 subsection (1)(b) must be deposited in the federal special  
 20 revenue account. Money deposited in that account may be  
 21 appropriated to the department to be used to detect and  
 22 collect unpaid taxes and overpayments of benefits to the  
 23 extent that federal grant revenues are inadequate for these  
 24 purposes. Money in the account not appropriated for these  
 25 purposes must be transferred by the department to the

1 unemployment insurance trust fund at the end of each fiscal  
 2 year."

3 **Section 28.** Section 39-51-3202, MCA, is amended to  
 4 read:

5 "39-51-3202. Making false statement or representation  
 6 or failing to disclose material fact in order to obtain or  
 7 increase benefits -- criminal penalty. (1) A person who, in  
 8 order to obtain or increase for personal gain or for any  
 9 other person benefits under this chapter or under an  
 10 employment security law of any other state or territory or  
 11 the federal government, knowingly makes a false statement or  
 12 representation or knowingly fails to disclose a material  
 13 fact is guilty of a crime under 45-7-203, and the department  
 14 may cause criminal proceedings to be initiated against the  
 15 person.

16 (2) A person will be required to repay to the  
 17 department an amount as determined by 39-51-3201(2)(1)(b).

18 (3) For purposes of this section, restitution awarded  
 19 under this section must include a sum equal to the amount  
 20 wrongfully received, plus ~~18% interest a year,~~ THE  
 21 DEPARTMENT MAY ASSESS a penalty equivalent to 33% NOT TO  
 22 EXCEED 100% of the amount wrongfully received.  
 23 ~~notwithstanding the provisions of 25-9-205.~~ All money  
 24 accruing from the penalty must be deposited in the federal  
 25 special revenue account. Money deposited in that account may

1 be appropriated to the department to be used to detect and  
 2 collect unpaid taxes and overpayments of benefits to the  
 3 extent that federal grant revenues are inadequate for these  
 4 purposes. Money in the account not appropriated for these  
 5 purposes must be transferred by the department to the  
 6 unemployment insurance trust fund at the end of each fiscal  
 7 year."

8 **Section 29.** Section 39-51-2107, MCA, is amended to  
 9 read:

10 "39-51-2107. Services for remuneration to be performed  
 11 during benefit year as condition for receiving benefits in  
 12 second benefit year -- amount required. An individual who  
 13 received benefits during a benefit year must perform  
 14 services for remuneration ~~after-the-beginning-of-that-year~~  
 15 following the initial separation from employment in the  
 16 previous benefit year as a condition for receiving benefits  
 17 in a second benefit year. ~~The--service-may-be-in-either~~  
 18 ~~covered--or--noncovered---employment:~~ The service must  
 19 constitute employment as defined in 39-51-203 and 39-51-204.  
 20 However, the individual must have earned the lesser of  
 21 three-thirteenths of his high quarter of his second benefit  
 22 year or 6 times his weekly benefit amount of that same  
 23 year."

24 **Section 30.** Section 39-51-2302, MCA, is amended to  
 25 read:

1 "39-51-2302. Disqualification for leaving work without  
 2 good cause. (1) An individual shall be disqualified for  
 3 benefits if he has left work without good cause attributable  
 4 to his employment.

5 (2) He may not be disqualified if the department finds  
 6 that he left his employment because of personal illness or  
 7 injury not associated with misconduct ~~or-left-his-employment~~  
 8 upon the advice of a licensed and practicing physician and,  
 9 after recovering from his illness or injury when recovery is  
 10 certified by a licensed and practicing physician, he  
 11 returned to his employer and offered his service and his  
 12 regular or comparable suitable work was not available, if so  
 13 found by the department, provided he is otherwise eligible.

14 (3) To requalify for benefits, an individual must  
 15 perform services other than self-employment for which  
 16 remuneration is received equal to or in excess of six times  
 17 his weekly benefit amount subsequent to the week in which  
 18 the act causing the disqualification occurred unless he has  
 19 been in regular attendance at an educational institution  
 20 accredited by the state of Montana for at least 3  
 21 consecutive months from the date of his enrollment."

22 ~~Section 33--Section--39-51-2303,--MCA,--is--amended--to~~  
 23 ~~read:~~

24 "39-51-2303--Disqualification---for---discharge or  
 25 suspension due--to--misconduct:--An--individual--shall--be

1 ~~disqualified--for--benefits--after---being---discharged~~ or  
2 ~~suspended;~~

3 ~~{1}--for--misconduct--connected--with--the--individual's--work~~  
4 ~~or---affecting---the---individual's---employment--until--the~~  
5 ~~individual---has---performed---services;---other---than~~  
6 ~~self-employment;--for--which--remuneration--is--received--equal--to~~  
7 ~~or--in--excess--of--eight--times--the--individual's--weekly--benefit~~  
8 ~~amount--subsequent--to--the--week--in--which--the--act--causing--the~~  
9 ~~disqualification--occurred;~~

10 ~~{2}--for--gross---misconduct---connected---with---the~~  
11 ~~individual's--work--or--committed--on--the--employer's--premises,~~  
12 ~~as--determined--by--the--department;--for--a--period--of--52--weeks."~~

13 NEW SECTION. **Section 31.** Repealer. Section 39-51-2308,  
14 MCA, is repealed.

15 NEW SECTION. **Section 32.** Severability. If a part of  
16 [this act] is invalid, all valid parts that are severable  
17 from the invalid part remain in effect. If a part of [this  
18 act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are  
20 severable from the invalid applications.

21 NEW SECTION. **Section 33.** Effective date. [This act] is  
22 effective July 1, 1991.

-End-

## HOUSE BILL NO. 726

INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL,

O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES"; TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY PAYMENT OF BENEFITS TO ALIENS; ~~TO REVISE PAYMENT OF EXTENDED BENEFITS~~; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR LEAVING WORK WITHOUT GOOD CAUSE; ~~TO DISQUALIFY AN INDIVIDUAL~~

~~FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK DUE TO MISCONDUCT~~; TO REPEAL DISQUALIFICATION FOR BENEFITS BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602, 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303, 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110, 39-51-2302, ~~39-51-2303, 39-51-2509, 39-51-2510~~, 39-51-2602, 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-51-201, MCA, is amended to read:

"39-51-201. **General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base

REFERENCE BILL



1 period shall be that applicable under the unemployment law  
 2 of the paying state. For an individual who fails to meet the  
 3 qualifications of 39-51-2105 or a similar statute of another  
 4 state due to a temporary total disability as defined in  
 5 39-71-116 or a similar statute of another state or the  
 6 United States, the base period means the first four quarters  
 7 of the last five quarters preceding the disability if a  
 8 claim for unemployment benefits is filed within 24 months of  
 9 the date on which the individual's disability was incurred.

10 (3) "Benefits" means the money payments payable to an  
 11 individual, as provided in this chapter, with respect to the  
 12 individual's unemployment.

13 (4) "Benefit year", with respect to any individual,  
 14 means the 52-consecutive-week period beginning with the  
 15 first day of the calendar week in which such individual  
 16 files a valid claim for benefits, except that the benefit  
 17 year shall be 53 weeks if filing a new valid claim would  
 18 result in overlapping any quarter of the base year of a  
 19 previously filed new claim. A subsequent benefit year may  
 20 not be established until the expiration of the current  
 21 benefit year. However, in the case of a combined-wage claim  
 22 pursuant to the arrangement approved by the secretary of  
 23 labor of the United States, the base period is the period  
 24 applicable under the unemployment law of the paying state.

25 (5) "Board" means the board of labor appeals provided

1 for in Title 2, chapter 15, part 17.

2 (6) "Calendar quarter" means the period of 3  
 3 consecutive calendar months ending on March 31, June 30,  
 4 September 30, or December 31.

5 (7) "Contributions" means the money payments to the  
 6 state unemployment insurance fund required by this chapter  
 7 but does not include assessments under 39-51-404(4).

8 (8) "Department" means the department of labor and  
 9 industry provided for in Title 2, chapter 15, part 17.

10 (9) "Employing unit" means any individual or  
 11 organization, including the state government, any of its  
 12 political subdivisions or instrumentalities, any  
 13 partnership, association, trust, estate, joint-stock  
 14 company, insurance company, or corporation, whether domestic  
 15 or foreign, or the receiver, trustee in bankruptcy, trustee  
 16 or successor thereof, or the legal representative of a  
 17 deceased person which has or had in its employ one or more  
 18 individuals performing services for it within this state,  
 19 except as provided under ~~subsections--(8)--and--(9)--of~~  
 20 ~~39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals  
 21 performing services within this state for any employing unit  
 22 which maintains two or more separate establishments within  
 23 this state are considered to be employed by a single  
 24 employing unit for all the purposes of this chapter. Each  
 25 individual employed to perform or assist in performing the

1 work of any agent or employee of an employing unit is deemed  
2 to be employed by such employing unit for the purposes of  
3 this chapter, whether such individual was hired or paid  
4 directly by such employing unit or by such agent or  
5 employee, provided the employing unit has actual or  
6 constructive knowledge of the work.

7 (10) "Employment office" means a free public employment  
8 office or branch thereof operated by this state or  
9 maintained as a part of a state-controlled system of public  
10 employment offices or such other free public employment  
11 offices operated and maintained by the United States  
12 government or its instrumentalities as the department may  
13 approve.

14 (11) "Fund" means the unemployment insurance fund  
15 established by this chapter to which all contributions and  
16 payments in lieu of contributions are required to be paid  
17 and from which all benefits provided under this chapter  
18 shall be paid.

19 (12) "Gross misconduct" means a criminal act, other than  
20 a violation of a motor vehicle traffic law, for which an  
21 individual has been convicted in a criminal court or has  
22 admitted or conduct which demonstrates a flagrant and wanton  
23 disregard of and for the rights or title or interest of a  
24 fellow employee or the employer.

25 (13) "Hospital" means an institution which has been

1 licensed, certified, or approved by the state as a hospital.

2 (14) "Independent contractor" means an individual who  
3 renders service in the course of an occupation and:

4 (a) has been and will continue to be free from control  
5 or direction over the performance of the services, both  
6 under his contract and in fact; and

7 (b) is engaged in an independently established trade,  
8 occupation, profession, or business.

9 (15) (a) "Institution of higher education", for the  
10 purposes of this part, means an educational institution  
11 which:

12 (i) admits as regular students only individuals having  
13 a certificate of graduation from a high school or the  
14 recognized equivalent of such a certificate;

15 (ii) is legally authorized in this state to provide a  
16 program of education beyond high school;

17 (iii) provides an educational program for which it  
18 awards a bachelor's or higher degree or provides a program  
19 which is acceptable for full credit toward such a degree, a  
20 program of postgraduate or postdoctoral studies, or a  
21 program of training to prepare students for gainful  
22 employment in a recognized occupation; and

23 (iv) is a public or other nonprofit institution.

24 (b) Notwithstanding any of the foregoing provisions of  
25 this subsection, all colleges and universities in this state

1 are institutions of higher education for purposes of this  
2 part.

3 (16) "State" includes, in addition to the states of the  
4 United States of America, the District of Columbia, Puerto  
5 Rico, the Virgin Islands, and the Dominion of Canada.

6 (17) "Taxes" means contributions and assessments  
7 required under this chapter but does not include penalties  
8 or interest for past-due or unpaid contributions or  
9 assessments.

10 ~~(17)~~(18) "Unemployment insurance administration fund"  
11 means the unemployment insurance administration fund  
12 established by this chapter from which administrative  
13 expenses under this chapter shall be paid.

14 ~~(18)~~(19) (a) "Wages" means all remuneration payable for  
15 personal services, including commissions and bonuses, the  
16 cash value of all remuneration payable in any medium other  
17 than cash, and backpay received pursuant to a dispute  
18 related to employment. The reasonable cash value of  
19 remuneration payable in any medium other than cash shall be  
20 estimated and determined in accordance with rules prescribed  
21 by the department.

22 (b) The term "wages" does not include:

23 (i) the amount of any payment made by the employer, if  
24 the payment was made under a plan established for the  
25 employees in general or for a specific class or classes of

1 employees, to or on behalf of the employee for:

2 (A) retirement;

3 (B) sickness or accident disability, ~~but in the case of~~  
4 ~~payments--made--by--an--employer--directly--to--an--employee,--only~~  
5 ~~those--payments--made~~ under a workers' compensation law ~~are~~  
6 ~~excluded--from--"wages";~~

7 (C) medical and hospitalization expenses in connection  
8 with sickness or accident disability; or

9 (D) death;

10 (ii) remuneration paid by any county welfare office from  
11 public assistance funds for services performed at the  
12 direction and request of such county welfare office.

13 ~~(19)~~(20) "Week" means a period of 7 consecutive calendar  
14 days ending at midnight on Saturday.

15 ~~(20)~~(21) An individual's "weekly benefit amount" means  
16 the amount of benefits the individual would be entitled to  
17 receive for 1 week of total unemployment."

18 **Section 2.** Section 39-51-202, MCA, is amended to read:

19 **"39-51-202. Employer defined.** "Employer" means:

20 (1) any employing unit whose total annual payroll  
21 within either the current or preceding calendar year equals  
22 or exceeds the sum of \$1,000;

23 (2) any agricultural employing unit that pays \$20,000  
24 or more in cash to workers for agricultural labor in any  
25 quarter in the current or preceding calendar year or employs

1 10 or more workers in agricultural labor on 20 days in 20  
2 different weeks during the current or preceding calendar  
3 year;

4 (3) any domestic employing unit that pays \$1,000 or  
5 more in cash for domestic service in any quarter during the  
6 current or preceding calendar year;

7 +2+(4) any individual or employing unit which acquired  
8 the organization, trade, or business or substantially all of  
9 the assets thereof of another which at the time of such  
10 acquisition was an employer subject to this chapter;

11 +3+(5) any individual or employing unit which acquired  
12 the organization, trade, or business or substantially all  
13 the assets thereof of another employing unit not an employer  
14 subject to this chapter and which, if subsequent to such  
15 acquisition it were treated as a single unit with such other  
16 employing unit, would be an employer under subsection (1) of  
17 this section;

18 +4+(6) any employing unit not an employer by reason of  
19 any other subsection of this section for which, within  
20 either the current or preceding calendar year, service is or  
21 was performed with respect to which such employing unit is  
22 liable for any federal tax against which credit may be taken  
23 for contributions paid into a state unemployment fund or an  
24 employing unit which, as a condition for approval of this  
25 chapter for full tax credit against the tax imposed by the

1 Federal Unemployment Tax Act, is required pursuant to such  
2 act to be an employer under this chapter;

3 +5+(7) any employing unit which, having become an  
4 employer under subsection (1), +2+-+3+ (2), (3), (4), (5),  
5 or +4+ (6) has not, under 39-51-1101, ceased to be an  
6 employer subject to this chapter; or

7 +6+(8) for the effective period of its election  
8 pursuant to 39-51-1102, any other employing unit which has  
9 elected to become fully subject to this chapter."

10 **Section 3.** Section 39-51-203, MCA, is amended to read:

11 **"39-51-203. Employment defined.** (1) "Employment",  
12 subject to other provisions of this section, means service  
13 by an individual or by an officer of a corporation,  
14 including service in interstate commerce, performed for  
15 wages or under any contract of hire, written or oral,  
16 express or implied.

17 (2) (a) The term "employment" includes an individual's  
18 entire service performed within or both within and without  
19 this state if:

- 20 (i) the service is localized in this state; or
- 21 (ii) the service is not localized in any state but some  
22 of the service is performed in this state and:

23 (A) the base of operations or, if there is no base of  
24 operations, then the place from which such service is  
25 directed or controlled, is in this state; or

1 (B) the base of operations or place from which such  
 2 service is directed or controlled is not in any state in  
 3 which some part of the service is performed, but the  
 4 individual's residence is in this state.

5 (b) Service is considered to be localized within a  
 6 state if:

7 (i) the service is performed entirely within such  
 8 state; or

9 (ii) the service is performed both within and without  
 10 such state, but the service performed without such state is  
 11 incidental to the individual's service within the state, for  
 12 example, is temporary or transitory in nature or consists of  
 13 isolated transactions.

14 (3) Service not covered under subsection (2) of this  
 15 section and performed entirely without this state with  
 16 respect to no part of which contributions are required and  
 17 paid under an unemployment insurance law of any other state  
 18 or of the federal government is considered to be employment  
 19 subject to this chapter if the individual performing such  
 20 services is a resident of this state and the department  
 21 approves the election of the employing unit for whom such  
 22 services are performed that the entire service of such  
 23 individual is considered to be employment subject to this  
 24 chapter.

25 (4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless  
 2 and until it is shown to the satisfaction of the department  
 3 that the individual is an independent contractor.

4 (5) The term "employment" includes service performed by  
 5 an individual in the employ of this state or any of its  
 6 instrumentalities (or in the employ of this state and one or  
 7 more other states or their instrumentalities) for a hospital  
 8 or institution of higher education located in this state.

9 The term "employment" includes service performed by all  
 10 individuals, including without limitations those individuals  
 11 who work for the state of Montana, its universities, any of  
 12 its colleges, public schools, components or units thereof,  
 13 or any local government unit and one or more other states or  
 14 their instrumentalities or political subdivisions whose  
 15 services are compensated by salary or wages.

16 (6) The term "employment" includes service performed by  
 17 an individual in the employ of a religious, charitable,  
 18 scientific, literary, or educational organization.

19 (7) (a) The term "employment" includes the service of  
 20 an individual who is a citizen of the United States  
 21 performed outside the United States, except in Canada, in  
 22 the employ of an American employer, other than service which  
 23 is considered employment under the provisions of subsection  
 24 (2) of this section or the parallel provisions of another  
 25 state's law, if:

1 (i) the employer's principal place of business in the  
2 United States is located in this state;

3 (ii) the employer has no place of business in the United  
4 States, but:

5 (A) the employer is an individual who is a resident of  
6 this state;

7 (B) the employer is a corporation which is organized  
8 under the laws of this state; or

9 (C) the employer is a partnership or a trust and the  
10 number of the partners or trustees who are residents of this  
11 state is greater than the number who are residents of any  
12 other state; or

13 (iii) none of the criteria of sections (7)(a)(i) and  
14 (7)(a)(ii) of this subsection are met but the employer has  
15 elected coverage in this state or, the employer having  
16 failed to elect coverage in any state, the individual has  
17 filed a claim for benefits based on such service under the  
18 law of this state.

19 (b) An "American employer", for purposes of this  
20 subsection, means a person who is:

21 (i) an individual who is a resident of the United  
22 States;

23 (ii) a partnership if two-thirds or more of the partners  
24 are residents of the United States;

25 (iii) a trust if all of the trustees are residents of

1 the United States; or

2 (iv) a corporation organized under the laws of the  
3 United States or of any state.

4 ~~{8}--Agricultural--labor--exempted--under--39-51-204--is  
5 considered--employment--whenever--the--employing--unit--pays  
6 \$20,000--or--more--in--cash--to--workers--for--agricultural--labor--in  
7 any--quarter--in--the--current--or--preceding--calendar--year--or  
8 employs--10--or--more--workers--in--agricultural--labor--on--20--days  
9 in--20--different--weeks--during--the--current--or--preceding  
10 calendar--year--if--an--employer--including--but--not--limited--to  
11 an--employing--unit--providing--outfitter--and--guide--services--is  
12 otherwise--subject--to--this--chapter--and--has--agricultural  
13 employment--all--employees--engaged--in--agricultural--labor--must  
14 be---excluded--from--coverage--under--this--chapter--if--the  
15 employer:~~

16 ~~{a}--in--any--quarter--or--calendar--year--as--applicable--  
17 does--not--meet--either--of--the--tests--relating--to--the--monetary  
18 amount--or--number--of--employees--and--days--worked--for--the  
19 subject--wages--attributable--to--agricultural--labor--and  
20 {b}--keeps--separate--books--and--records--to--account--for--the  
21 employment--of--persons--in--agricultural--labor;~~

22 ~~{9}--Domestic--service--exempted--under--39-51-204{1}{b}--is  
23 considered--employment--whenever--the--employing--unit--pays  
24 \$1,000--or--more--in--cash--for--domestic--service--in--any--quarter  
25 during--the--current--or--preceding--calendar--year--if--an~~

1 employer--is--otherwise--subject--to--this--chapter--and--has  
2 domestic--service--employment,--all--employees--engaged--in  
3 domestic--service--must--be--excluded--from--coverage--under--this  
4 chapter--if--the--employer:

5 (a)--does--not--meet--the--monetary--payment--test--in--any  
6 quarter--or--calendar--year,--as--applicable,--for--the--subject  
7 wages--attributable--to--domestic--service;--and

8 (b)--keeps--separate--books--and--records--to--account--for--the  
9 employment--of--persons--in--domestic--service."

10 Section 4. Section 39-51-204, MCA, is amended to read:

11 "39-51-204. Exclusions from definition of employment.

12 (1) The term "employment" does not include:

13 (a) agricultural labor, except as provided in  
14 39-51-203(8); 39-51-202(2). If an employer is otherwise  
15 subject to this chapter and has agricultural employment, all  
16 employees engaged in agricultural labor must be excluded  
17 from coverage under this chapter if the employer:

18 (i) in any quarter or calendar year, as applicable,  
19 does not meet either of the tests relating to the monetary  
20 amount or number of employees and days worked, for the  
21 subject wages attributable to agricultural labor; and

22 (ii) keeps separate books and records to account for the  
23 employment of persons in agricultural labor;

24 (b) domestic service in a private home, local college  
25 club, or local chapter of a college fraternity or sorority,

1 except as provided in 39-51-203(9); 39-51-202(3). If an  
2 employer is otherwise subject to this chapter and has  
3 domestic service employment, all employees engaged in  
4 domestic service must be excluded from coverage under this  
5 chapter if the employer:

6 (i) does not meet the monetary payment test in any  
7 quarter or calendar year, as applicable, for the subject  
8 wages attributable to domestic service; and

9 (ii) keeps separate books and records to account for the  
10 employment of persons in domestic service;

11 (c) service performed as an officer or member of the  
12 crew of a vessel on the navigable waters of the United  
13 States;

14 (d) service performed by an individual in the employ of  
15 that individual's son, daughter, or spouse and service  
16 performed by a child under the age of 21 in the employ of  
17 the child's father or mother;

18 (e) service performed in the employ of any other state  
19 or its political subdivisions or of the United States  
20 government or of an instrumentality of any other state or  
21 states or their political subdivisions or of the United  
22 States, except that national banks organized under the  
23 national banking law shall not be entitled to exemption  
24 under this subsection and shall be subject to this chapter  
25 the same as state banks, provided that such service is

1 excluded from employment as defined in the Federal  
2 Unemployment Tax Act by section 3306(c)(7) of that act;

3 (f) service with respect to which unemployment  
4 insurance is payable under an unemployment insurance system  
5 established by an act of congress, provided that the  
6 department must enter into agreements with the proper  
7 agencies under such act of congress, which agreements shall  
8 become effective in the manner prescribed in the Montana  
9 Administrative Procedure Act for the adoption of rules, to  
10 provide reciprocal treatment to individuals who have, after  
11 acquiring potential rights to benefits under this chapter,  
12 acquired rights to unemployment insurance under such act of  
13 congress or who have, after acquiring potential rights to  
14 unemployment insurance under such act of congress, acquired  
15 rights to benefits under this chapter;

16 (g) services performed in the delivery and distribution  
17 of newspapers or shopping news from house to house and  
18 business establishments by an individual under the age of 18  
19 years, but not including the delivery or distribution to any  
20 point or points for subsequent delivery or distribution;

21 (h) services performed by real estate, securities, and  
22 insurance salespeople paid solely by commissions and without  
23 guarantee of minimum earnings;

24 (i) service performed in the employ of a school,  
25 college, or university if such service is performed by a

1 student who is enrolled and is regularly attending classes  
2 at such school, college, or university or by the spouse of  
3 such a student if such spouse is advised, at the time such  
4 spouse commences to perform such service, that the  
5 employment of such spouse to perform such service is  
6 provided under a program to provide financial assistance to  
7 such student by such school, college, or university and such  
8 employment will not be covered by any program of  
9 unemployment insurance;

10 (j) service performed by an individual who is enrolled  
11 at a nonprofit or public educational institution, which  
12 normally maintains a regular faculty and curriculum and  
13 normally has a regularly organized body of students in  
14 attendance at the place where its educational activities are  
15 carried on, as a student in a full-time program taken for  
16 credit at such institution which combines academic  
17 instruction with work experience if such service is an  
18 integral part of such program and such institution has so  
19 certified to the employer, except that this subsection shall  
20 not apply to service performed in a program established for  
21 or on behalf of an employer or group of employers;

22 (k) service performed in the employ of a hospital if  
23 such service is performed by a patient of the hospital;

24 (l) services performed by a cosmetologist who is  
25 licensed under Title 37, chapter 31, or a barber who is



1 licensed under Title 37, chapter 30, and who has  
 2 acknowledged in writing that he is not covered by  
 3 unemployment insurance and workers' compensation and who  
 4 contracts with a cosmetological establishment as defined in  
 5 37-31-101 or a barbershop as defined in 37-30-101, which  
 6 contract shall show the cosmetologist or barber is free from  
 7 all control and direction of the owner in the contract and  
 8 in fact; receives payment for services from his or her  
 9 individual clientele; leases, rents, or furnishes all of his  
 10 or her own equipment, skills, or knowledge; and whose  
 11 contract gives rise to an action for breach of contract in  
 12 the event of contract termination (the existence of a single  
 13 license for the cosmetological establishment or barbershop  
 14 shall not be construed as a lack of freedom from control or  
 15 direction under this subsection);

16 (m) casual labor not in the course of an employer's  
 17 trade or business performed in any calendar quarter, unless  
 18 the cash remuneration paid for such service is \$50 or more  
 19 and such service is performed by an individual who is  
 20 regularly employed by such employer to perform such service.  
 21 "Regularly employed" means the services are performed during  
 22 at least 24 days in the same quarter.

23 (n) services performed for the installation of floor  
 24 coverings if the installer:

25 (i) bids or negotiates a contract price based upon work

1 performed by the yard or by the job;

2 (ii) is paid upon completion of an agreed upon portion  
 3 of the job or after the job is completed;

4 (iii) may perform services for anyone without  
 5 limitation;

6 (iv) may accept or reject any job;

7 (v) furnishes substantially all tools and equipment  
 8 necessary to provide the services; and

9 (vi) works under a written contract that:

10 (A) gives rise to a breach of contract action if the  
 11 installer or any other party fails to perform the contract  
 12 obligations;

13 (B) states the installer is not covered by unemployment  
 14 insurance; and

15 (C) requires the installer to provide a current  
 16 workers' compensation policy or to obtain an exemption from  
 17 workers' compensation requirements.

18 (2) "Employment" does not include elected public  
 19 officials.

20 (3) For the purposes of 39-51-203(6), the term  
 21 "employment" does not apply to service performed:

22 (a) in the employ of a church or convention or  
 23 association of churches or an organization which is operated  
 24 primarily for religious purposes and which is operated,  
 25 supervised, controlled, or principally supported by a church

1 or convention or association of churches;

2 (b) by a duly ordained, commissioned, or licensed  
3 minister of a church in the exercise of the church's  
4 ministry or by a member of a religious order in the exercise  
5 of duties required by such order;

6 (c) in a facility conducted for the purpose of carrying  
7 out a program of rehabilitation for individuals whose  
8 earning capacity is impaired by age or physical or mental  
9 deficiency or injury or providing remunerative work for  
10 individuals who, because of their impaired physical or  
11 mental capacity, cannot be readily absorbed in the  
12 competitive labor market by an individual receiving such  
13 rehabilitation or remunerative work;

14 (d) as part of an unemployment work-relief or  
15 work-training program assisted or financed in whole or in  
16 part by a federal agency or any agency of a state or  
17 political subdivision thereof by an individual receiving  
18 such work relief or work training; or

19 (e) for a state prison or other state correctional or  
20 custodial institution by an inmate of that institution."

21 **Section 5.** Section 39-51-206, MCA, is amended to read:

22 "39-51-206. Agricultural labor -- who treated as  
23 employer of member of a crew furnished by a crew leader. (1)  
24 For the purposes of 39-51-203, any individual who is a  
25 member of a crew furnished by a crew leader to perform

1 service in agricultural labor for any other person shall be  
2 treated as an employee of such crew leader if:

3 (a) such crew leader holds a valid certificate of  
4 registration under the Migrant and Seasonal Agricultural  
5 Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);  
6 or

7 (b) (i) substantially all the members of such crew  
8 operate or maintain tractors, mechanized harvesting or  
9 cropdusting equipment, or any other mechanized equipment  
10 which is provided by such crew leader; and

11 (ii) such individual is not an employee of such other  
12 person ~~within the meaning of 39-51-203(1), 39-51-203(8), or~~  
13 39-51-203(9) for whom services in agricultural labor are  
14 performed.

15 (2) In the case of any individual who is furnished by a  
16 crew leader to perform service in agricultural labor for any  
17 other person and who is not treated as an employee of such  
18 crew leader under subsection (1):

19 (a) such other person and not the crew leader shall be  
20 treated as the employer of such individual; and

21 (b) such other person shall be treated as having paid  
22 cash remuneration to such individual in an amount equal to  
23 the amount of cash remuneration paid to such individual by  
24 the crew leader, either on his own behalf or on behalf of  
25 such other person, for the service in agricultural labor

1 performed for such other person.

2 (3) The term "crew leader" means an individual who:

3 (a) furnishes individuals to perform service in  
4 agricultural labor for any other person;

5 (b) pays, either on his own behalf or on behalf of such  
6 other person, the individuals so furnished by him for the  
7 service in agricultural labor performed by them; and

8 (c) has not entered into a written agreement with such  
9 other person under which such individual is designated as an  
10 employee of such other person."

11 **Section 6.** Section 39-51-602, MCA, is amended to read:

12 **"39-51-602. Method to be used by department in keeping**  
13 **wage records.** Wage records kept by the department for the  
14 purposes of this chapter ~~shall~~ must be kept on the basis of  
15 wages paid, ~~except that for the purposes of determining~~  
16 benefit eligibility and the amount and duration of benefits  
17 payable, wages, including lump-sum payments of accrued  
18 wages, must be assigned to periods of time as determined in  
19 accordance with rules adopted by the department."

20 **Section 7.** Section 39-51-603, MCA, is amended to read:

21 **"39-51-603. Employing unit to keep records and make**  
22 **reports.** (1) Each employing unit shall keep true and  
23 accurate work records containing such information as the  
24 department may prescribe. Those records shall be open to  
25 inspection and audit and shall be subject to being copied by

1 the department or its authorized representative at any  
2 reasonable time and as often as may be necessary.

3 (2) The department and the chairman of any appeal  
4 tribunal may require from any employing unit any sworn or  
5 unsworn reports with respect to persons employed by it which  
6 the department considers necessary to the effective  
7 administration of this chapter.

8 (3) Information thus obtained or obtained from any  
9 individual under this chapter shall, except to the  
10 individual claimant to the extent necessary for the proper  
11 presentation of a claim, be held confidential and shall not  
12 be published or be open to public inspection, except to  
13 public employees in the performance of their public duties,  
14 in any manner revealing the individual's or employing unit's  
15 identity, but any claimant or his legal representative at a  
16 hearing before the board or appeal tribunal shall be  
17 supplied with information from the records to the extent  
18 necessary for the proper presentation of his claim.

19 (4) Any employee or member of the department who  
20 violates any provision of this section shall be fined not  
21 less than \$20 or more than \$200 or imprisoned for not longer  
22 than 90 days or both."

23 **Section 8.** Section 39-51-1101, MCA, is amended to read:

24 **"39-51-1101. Commencement and termination of coverage**  
25 **under chapter.** (1) Any employing unit which is or becomes an

1 employer subject to this chapter within any calendar year  
2 shall be subject to this chapter during the whole of such  
3 calendar year, except that this subsection shall not apply  
4 to an employing unit electing coverage as provided for in  
5 39-51-1102.

6 (2) Except as otherwise provided in 39-51-1102, an  
7 employing unit shall cease to be an employer subject to this  
8 chapter only as of January 1 of any calendar year only if it  
9 files with the department prior to the last day of February  
10 of such year a written application for termination of  
11 coverage and the department finds that the total wages  
12 payable for employment by said employer in the preceding  
13 calendar year did not equal or exceed \$1,000 the amount of  
14 wages required under 39-51-202 to be considered an employer  
15 subject to this chapter. For the purpose of this subsection,  
16 the two or more employing units mentioned in ~~subsection (2)~~  
17 ~~or (3) of 39-51-202(4) or (5)~~ shall be treated as a single  
18 employing unit."

19 **Section 9.** Section 39-51-1104, MCA, is amended to read:

20 "39-51-1104. Duty and liability of contractor and  
21 subcontractor, respectively, in regard to contributions  
22 taxes, penalties, and interest owed by subcontractor. (1)  
23 Any contractor who is or becomes an employer under the  
24 provisions of this chapter who contracts with any  
25 subcontractor who also is or becomes an employer under the

1 provisions of this chapter shall withhold sufficient money  
2 on the contract to guarantee that all contributions taxes,  
3 penalties, and interest are paid upon completion of the  
4 contract.

5 (2) It shall be the duty of any subcontractor who is or  
6 becomes an employer under the provisions of this chapter to  
7 furnish the contractor with a certification issued by the  
8 department, prior to final payment for the particular job,  
9 stating that said subcontractor is current and in full  
10 compliance with the provisions of this chapter.

11 (3) Failure to comply with the provisions of this  
12 section shall render the contractor directly liable for all  
13 contributions taxes, penalties, and interest due from the  
14 subcontractor on the particular job, and the administrator  
15 has all of the remedies of collection against the contractor  
16 under the provisions of this chapter as though the services  
17 in question were performed directly for the contractor."

18 **Section 10.** Section 39-51-1105, MCA, is amended to  
19 read:

20 "39-51-1105. Liability of corporate officers for  
21 contributions taxes, penalties, and interest owed by  
22 corporation. When a corporation subject to Montana corporate  
23 law has failed to file the annual corporation report with  
24 the Montana secretary of state as required by law the  
25 department shall hold the president, vice-president,

1 secretary, and treasurer jointly and severally liable for  
 2 any contributions taxes, penalties, and interest due for the  
 3 period in which the corporation is delinquent in filing the  
 4 annual corporation report. If the required annual  
 5 corporation report is made and filed after the time  
 6 specified, such officers may not, on account of prior  
 7 failure to make report, be held liable for the contributions  
 8 taxes, PENALTIES, AND INTEREST thereafter accruing."

9 **Section 11.** Section 39-51-1110, MCA, is amended to  
 10 read:

11 **"39-51-1110. Refunds to employers.** (1) If not later  
 12 than 3 years after the date on which any contributions taxes  
 13 or interest thereon became due or not later than 1 year from  
 14 the date on which payment was made, whichever is later, an  
 15 employer who has paid such contributions taxes or interest  
 16 thereon shall make application for an adjustment thereof in  
 17 connection with subsequent contribution tax payments or for  
 18 a refund thereof because such adjustment cannot be made and  
 19 the department shall determine that such contributions taxes  
 20 or interest or any portion thereof was erroneously  
 21 collected, the department shall allow such employer to make  
 22 an adjustment thereof, without interest, in connection with  
 23 subsequent contribution tax payments by him or, if such  
 24 adjustment cannot be made, the department shall refund said  
 25 amount, without interest, from the fund. For like cause and

1 within the same period, adjustment or refund may be so made  
 2 on the department's own initiative.

3 (2) If the department shall determine that an employer  
 4 has paid contributions taxes to this state under this  
 5 chapter when such contributions taxes should have been paid  
 6 to another state under a similar act of such other state,  
 7 transfer of such contributions taxes to such other state  
 8 shall be made upon discovery or, upon proof of payment that  
 9 such other state has been fully paid, then refund to such  
 10 employer shall be made at any time upon application without  
 11 limitation of time.

12 (3) In the event that this chapter is not certified by  
 13 the secretary of labor under section 1603 of the Internal  
 14 Revenue Code, as amended, 1939, for any year, then and in  
 15 that event refunds shall be made of all contributions taxes  
 16 required under this chapter from employers for that year."

17 **Section 12.** Section 39-51-1301, MCA is amended to read:

18 **"39-51-1301. (Effective July 1, 1991) Penalty and**  
 19 **interest on past-due contributions taxes.** (1) Contributions  
 20 Taxes unpaid on the date on which they are due and payable,  
 21 as provided by subsections (1) and (2) of 39-51-1103 and  
 22 39-51-1125, that are paid by the end of the month following  
 23 the due date shall be subject to a penalty assessment of \$10  
 24 or 10% of the contribution tax due, whichever is greater. If  
 25 the contributions taxes are not paid by the end of the month

1 following the due date, the employer shall be subject to a  
 2 penalty assessment of \$15 or 15% of the contributions taxes  
 3 due, whichever is greater. All past-due contributions taxes  
 4 shall bear interest at the rate of 18% a year, to be  
 5 prorated on a daily basis.

6 (2) A penalty of \$40 shall be assessed whenever, as the  
 7 result of a willful refusal of an employer to furnish wage  
 8 information or pay contributions taxes on time, the  
 9 department issues a subpoena to obtain wage information or  
 10 makes a summary or jeopardy assessment pursuant to  
 11 39-51-1302.

12 (3) Interest and penalties collected pursuant to this  
 13 section shall be paid into the unemployment insurance trust  
 14 fund.

15 (4) When failure to pay contributions taxes on time was  
 16 not caused by willful intent of the employer, the department  
 17 may abate the penalty and interest.

18 (5) All money accruing to the unemployment insurance  
 19 trust fund from interest and penalties collected on past-due  
 20 contributions taxes must be used solely for the payment of  
 21 unemployment insurance benefits and may not be used for any  
 22 other purpose."

23 **Section 13.** Section 39-51-1302, MCA, is amended to  
 24 read:

25 **"39-51-1302. Summary of jeopardy assessment of unpaid**

1 contributions taxes. (1) If any employer fails to file a  
 2 report or return as required under this chapter or the  
 3 regulations of the department adopted thereunder within the  
 4 time specified or if the employer's records are inaccurate  
 5 or are incomplete when an employer has already filed a  
 6 quarterly wage report for the period in question, the  
 7 department may make a summary or jeopardy assessment of the  
 8 amount due by making up such report and determining the  
 9 amount of contributions taxes due and owing to the fund upon  
 10 the basis of such information as the department may be able  
 11 to obtain, and thereupon the same shall be collected the  
 12 same as other reports and contributions taxes due, with  
 13 penalty and interest as provided in this chapter.

14 (2) Upon making such summary or jeopardy assessment,  
 15 the department shall immediately notify the employer in  
 16 writing by personal service or by certified ~~or~~ registered  
 17 mail in the usual course at the last known principal place  
 18 of business operated by the employer. Such assessment shall  
 19 be final unless the employer shall protest such assessment  
 20 in writing within 15 days after service of the notice or,  
 21 within the same period of time, the employer shall file a  
 22 correct, signed, and sworn report and statement as provided  
 23 by the chapter and the regulations of the department.

24 (3) Upon written protest being filed as above set  
 25 forth, a day certain for the hearing thereof shall be fixed

1 by the department and notice thereof mailed to the employer.  
 2 At such hearing, the facts ascertained by the department  
 3 shall be conclusive and the department may upon the basis of  
 4 such facts ascertained assess the amount due, modify, set  
 5 aside, or revise the prior assessment and require the  
 6 employer to pay the amount due with penalty and interest as  
 7 provided for in this chapter. A copy of the decision of the  
 8 department and the assessment of the amount due shall be  
 9 mailed to the employer at his last known principal place of  
 10 business and thereupon become final."

11 **Section 14.** Section 39-51-1303, MCA, is amended to  
 12 read:

13 "39-51-1303. Collection of unpaid contributions taxes  
 14 by civil action. (1) If, after due notice, any employer  
 15 defaults in any payment of contributions taxes, penalties,  
 16 or interest thereon, the department may at its discretion  
 17 initiate a civil action in the name of the Montana  
 18 department of labor and industry to collect the amount due,  
 19 and the employer adjudged in default shall pay the costs of  
 20 such action.

21 (2) An action for the collection of contributions taxes  
 22 due must be brought within 5 years after the due date of  
 23 such contributions taxes or it is barred.

24 (3) The department may pursue its remedy under either  
 25 this section or 39-51-1304, or both."

1 **Section 15.** Section 39-51-1304, MCA, is amended to  
 2 read:

3 "39-51-1304. Lien for payment of unpaid contributions  
 4 and-assessments taxes -- levy and execution. (1) Unpaid  
 5 contributions--and--assessments--under--39-51-404(4) taxes,  
 6 including penalties and interest assessed thereon, have the  
 7 effect of a judgment against the employer, arising at the  
 8 time such payments are due. The department may issue a  
 9 certificate setting forth the amount of payments due and  
 10 directing the clerk of the district court of any county of  
 11 the state to enter the certificate as a judgment in the  
 12 docket pursuant to 25-9-301. From the time the judgment is  
 13 docketed, it becomes a lien upon all real and personal  
 14 property of the employer. ~~From--the-time-the-judgment-is~~  
 15 ~~filed-with-the-secretary-of-state-or-a-registrar-of-personal~~  
 16 ~~property-specifically-describing-the-personal--property--it~~  
 17 ~~becomes-a-lien-upon-personal-property-of-the-employer.~~ After  
 18 the due process requirements of 39-51-1109 and 39-51-2403  
 19 have been satisfied, the department may enforce the judgment  
 20 pursuant to Title 25, chapter 13, except that the department  
 21 may enforce the judgment at any time within 10 years of the  
 22 creation of the lien.

23 (2) The lien provided for in subsection (1) is not  
 24 valid against any third party owning an interest in real or  
 25 personal property against which the judgment is enforced if:

1 (a) the third party's interest is recorded prior to the  
2 entrance of the certificate as a judgment; and

3 (b) the third party receives from the most recent  
4 grantor of the interest a signed affidavit stating that all  
5 ~~contributions~~--assessments taxes, penalties, and interest  
6 due from the grantor have been paid.

7 (3) A grantor who signs and delivers an affidavit is  
8 subject to the penalties imposed by 39-51-3204 if any part  
9 of it is untrue. Notwithstanding the provisions of  
10 39-51-3204, the department may proceed against the employer  
11 under this section or 39-51-1303, or both, to collect the  
12 delinquent ~~contributions~~--assessments taxes, penalties, and  
13 interest.

14 (4) The lien provided for in subsection (1) must be  
15 released upon payment in full of the unpaid taxes,  
16 penalties, and accumulated interest. The department may  
17 release or may partially release the lien upon partial  
18 payment or whenever the department determines that the  
19 release or partial release of the lien will facilitate the  
20 collection of unpaid taxes, penalties, or interest. The  
21 department may release the lien if it determines that the  
22 lien is unenforceable."

23 **Section 16.** Section 39-51-1305, is amended to read:

24 "39-51-1305. Priority of payment of contributions taxes  
25 due under legal dissolutions or distributions. In the event

1 of any distribution of an employer's assets pursuant to an  
2 order of any court under the laws of this state, including  
3 any receivership, assignment for benefit of creditors,  
4 adjudicated insolvency, composition, or similar proceeding,  
5 contributions taxes then or thereafter due shall be paid in  
6 full prior to all other claims, except taxes and claims for  
7 wages of not more than \$250 to each claimant earned within 6  
8 months of the commencement of the proceeding."

9 **Section 17.** Section 39-51-1306, MCA, is amended to  
10 read:

11 "39-51-1306. Reciprocity with other states for  
12 collection of unpaid contributions taxes. (1) The courts of  
13 this state shall recognize and enforce liabilities for  
14 unemployment contributions taxes and any other special  
15 assessments imposed by other states which extend a like  
16 comity to this state.

17 (2) The department is hereby empowered to sue in the  
18 courts of any other jurisdiction which extends such comity  
19 to collect unemployment contributions taxes, penalties, and  
20 interest due this state. The officials of other states which  
21 by statute or otherwise extend a like comity to this state  
22 may sue in the courts of this state to collect for such  
23 contributions taxes and any other special assessments and  
24 interest and penalties, if any, due such state. In any such  
25 case the administrator may through his attorney or attorneys



1 institute and conduct such suit for such other state.

2 (3) Venue of such proceedings shall be the same as for  
3 actions to collect delinquent contributions taxes,  
4 penalties, and interest due under this chapter.

5 (4) A certificate by the secretary of any such state  
6 under the great seal of such state attesting the authority  
7 of such official or officials to collect unemployment  
8 insurance contributions taxes and other special assessments,  
9 penalties, and interest shall be conclusive evidence of such  
10 authority."

11 **Section 18.** Section 39-51-2110, MCA, is amended to  
12 read:

13 "**39-51-2110. Payment of benefits to aliens.** (1)  
14 ~~Effective--January--17--1978,--benefits~~ Benefits shall not be  
15 paid payable on the basis of services performed by an alien  
16 unless such the alien is an individual who has-been was  
17 lawfully admitted for permanent residence at the time the  
18 services were performed, was lawfully present for the  
19 purposes of performing the services, or otherwise-is was  
20 permanently residing in the United States under color of  
21 law at the time the services were performed, including an  
22 alien who is was lawfully present in the United States as a  
23 result of the application of the provisions of section  
24 203(a)(7) or section 212(d)(5) of the Immigration and  
25 Nationality Act.

1 (2) Any data or information required of individuals  
2 applying for benefits to determine whether benefits are not  
3 payable to them because of their alien status shall be  
4 uniformly required from all applicants for benefits.

5 (3) In the case of an individual whose application for  
6 benefits would otherwise be approved, no determination that  
7 benefits to such individual are not payable because of his  
8 alien status shall be made except upon a preponderance of  
9 the evidence."

10 ~~Section-19--Section--39-51-2509,--MCA,--is--amended--to~~  
11 ~~read:~~

12 ~~"39-51-2509,--Weekly--extended--benefit--amount: (1) The~~  
13 ~~weekly-extended-benefit-amount-payable-to-an-individual--for~~  
14 ~~a-week-of-total-unemployment-in-his-eligibility-period-shall~~  
15 ~~be--an--amount-equal-to-the-weekly-benefit-amount,--except-as~~  
16 ~~provided-in-subsection-(2):~~

17 ~~(2)--For-any-week--during--a--period--in--which--federal~~  
18 ~~payments--to--this--state--under--section--204--of--the~~  
19 ~~Federal-State-Extended-Unemployment-Compensation-Act-of-1978~~  
20 ~~are-reduced-under-an-order-issued-under-section-252--of--the~~  
21 ~~Balanced--Budget--and--Emergency-Deficit-Control-Act-of-1985,~~  
22 ~~the-weekly-extended-benefit-amount-payable-to-an-individual~~  
23 ~~for--a--week-of-total-unemployment-in-his-eligibility-period~~  
24 ~~must-be-reduced-by-a-percentage-equivalent-to-the-percentage~~  
25 ~~of-the-reduction-in-the-federal-payment. The-reduced--weekly~~

1 ~~extended benefit amount, if not a full dollar amount, must~~  
 2 ~~be rounded to the nearest lower full dollar amount, payable~~  
 3 ~~to him during his applicable benefit year."~~

4 Section 20, Section 39-51-2510, MCA, is amended to  
 5 read:

6 "39-51-2510. Total extended benefit amount. The ~~(1)~~  
 7 ~~Except as provided in subsection (2), the total extended~~  
 8 ~~benefit amount payable to any eligible individual with~~  
 9 ~~respect to his applicable benefit year shall be the least of~~  
 10 ~~the following amounts:~~

11 ~~(1)(a) 50% of the total amount of regular benefits~~  
 12 ~~which were payable to him under this chapter in his~~  
 13 ~~applicable benefit year;~~

14 ~~(2)(b) 13 times his weekly benefit amount which was~~  
 15 ~~payable to him under this chapter for a week of total~~  
 16 ~~unemployment in the applicable benefit year.~~

17 ~~(2) During any fiscal year in which federal payments to~~  
 18 ~~this state under section 204 of the Federal State Extended~~  
 19 ~~Unemployment Compensation Act of 1970 are reduced under an~~  
 20 ~~order issued under section 252 of the Balanced Budget and~~  
 21 ~~Emergency Deficit Control Act of 1985, the total extended~~  
 22 ~~benefit amount payable to an individual with respect to his~~  
 23 ~~applicable benefit year must be reduced by an amount equal~~  
 24 ~~to the aggregate of the reductions under 39-51-2509 in the~~  
 25 ~~weekly amounts paid to the individual."~~

1 Section 19. Section 39-51-2602, MCA, is amended to  
 2 read:

3 "39-51-2602. Approved trade readjustment training under  
 4 federal programs. (1) Notwithstanding any other provisions  
 5 of this chapter, no otherwise eligible individual may be  
 6 denied benefits for any week:

7 (a) because he is of participation in training approved  
 8 under Section 236(a)(1) of the federal Trade Act of 1974; or  
 9 under Title III of the federal Job Training Partnership Act;

10 (b) in which he is because of participation in such  
 11 approved training described in subsection (1)(a) by reason  
 12 of leaving work to enter such the training if the work left  
 13 is not suitable employment; or

14 (c) because of the application to any such week in  
 15 training of provisions in this chapter or any federal  
 16 unemployment insurance law administered by this agency,  
 17 relating to availability for work, active search for work,  
 18 or refusal to accept work.

19 (2) For purposes of this section, "suitable employment"  
 20 means work of a substantially equal or higher skill level  
 21 than the individual's past adversely affected employment, as  
 22 defined for purposes of the federal Trade Act of 1974 and  
 23 the federal Job Training Partnership Act, and for which the  
 24 wages are not less than 80% of the individual's average  
 25 weekly wage as determined for the purposes of the federal

1 Trade Act of 1974 and the federal Job Training Partnership  
 2 Act."

3 **Section 20.** Section 39-51-1121, MCA, is amended to  
 4 read:

5 "39-51-1121. Definitions. As used in this part and part  
 6 12, the following definitions apply:

7 (1) "Computation date" means the reporting period  
 8 ending September 30 preceding the calendar year for which a  
 9 covered employer's contribution rate is effective.

10 (2) "Cutoff date" means ~~December-31~~ November-30 OCTOBER  
 11 31 immediately following the computation date. The  
 12 department may extend the cutoff date in meritorious cases.

13 (3) "Deficit employer" means an employer who is subject  
 14 under this chapter and who has established a record of  
 15 accumulated benefits charged to the employer's account in  
 16 ~~excess~~ of the employer's accumulated contributions paid as  
 17 of the cutoff date.

18 ~~(4)--"Department"--means--the--department--of--labor--and~~  
 19 ~~industry.~~

20 ~~(5)(4)~~ "(4) "Eligible employer" means an employer who has  
 21 been subject under this chapter for the 3 fiscal years  
 22 immediately preceding the computation date and who has:

23 ~~(a)--filed--all--contribution--reports--prescribed--by--the~~  
 24 ~~department;~~

25 ~~(b)--paid--all--contributions--and--all--assessments--under~~

1 ~~39-51-404(4)-and-penalties-and-interest-thereon;~~

2 ~~(c)(a)~~ established a record of accumulated  
 3 contributions in excess of benefits charged to the  
 4 employer's account; and

5 ~~(d)(b)~~ paid wages in at least 1 of the 8 calendar  
 6 quarters preceding the computation date.

7 ~~(6)(5)~~ "Fiscal year" means the four consecutive  
 8 calendar quarters ending on September 30.

9 ~~(7)(6)~~ "Governmental entities" means the state or any  
 10 political subdivision of the state or an instrumentality of  
 11 the state or a political subdivision, including any  
 12 employing unit funded directly by tax levies.

13 (7) "New employer" means an employer who:

14 (a) has not been subject to the provisions of this  
 15 chapter for the 3 fiscal years immediately preceding the  
 16 computation date; and

17 (b) has established a record of accumulated  
 18 contributions in excess of benefits charged to the  
 19 employer's account.

20 (8) "Taxable wage base" means the amount of wages  
 21 subject to contributions and to assessments under  
 22 39-51-404(4) for each calendar year. Payment of  
 23 contributions and of assessments under 39-51-404(4) may  
 24 apply only to wages paid up to and including the amount  
 25 specified in 39-51-1108.

~~(9) -- "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."~~

**Section 21.** Section 39-51-1125, MCA, is amended to read:

"39-51-1125. Computation of payments in lieu of contributions. (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such

employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

**Section 22.** Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's

1 account for all past periods which are completed  
 2 transactions by December 31 by total wages from date of  
 3 subjectivity of the employing unit through December 31; and

4 (b) the benefit cost for all past years of governmental  
 5 entities electing to pay contributions compared with total  
 6 payrolls reported for all past years by these governmental  
 7 entities used as a median, with the rates so fixed using the  
 8 median that the rates will, when applied to the total annual  
 9 payroll for subject governmental entities, yield total paid  
 10 contributions equaling approximately the total benefit  
 11 costs.

12 (3) New governmental entities electing to pay  
 13 contributions shall be assigned the median rate for the year  
 14 in which they become subject.

15 (4) At no time may the minimum rate be less than 0.1%  
 16 or the maximum rate be greater than 1.5%. The rates are to  
 17 be graduated at one-tenth intervals.

18 (5) In the event benefit charges exceed contributions  
 19 paid in the last 2 completed fiscal years, governmental  
 20 entities' rates will be adjusted by increasing all rates to  
 21 the next higher schedule.

22 (6) The computed rate is effective July 1 of each year.

23 (7) Governmental entities must be charged for their  
 24 share of the total benefits paid to a claimant if the  
 25 governmental entity contributed wages during the claimant's

1 base period. The benefit charged must be based on the  
 2 percentage of wages paid by the governmental entity as  
 3 compared to the total wages paid by all employers in the  
 4 claimant's base period.

5 (8) A payment may not be required under this section  
 6 with respect to benefits paid to an individual if the  
 7 governmental employer continues to provide employment to the  
 8 individual with no reduction in hours or wages."

9 **Section 23.** Section 39-51-1213, MCA, is amended to  
 10 read:

11 **"39-51-1213. Classification of employers for experience**  
 12 **rating purposes.** (1) The department shall for each calendar  
 13 year classify employers in accordance with their actual  
 14 experience in the payment of contributions and with respect  
 15 to benefits charged against their accounts, with  
 16 contribution rates reflecting benefit experience. Each  
 17 employer's rate for a calendar year shall be determined on  
 18 the basis of the employer's record as of October 1 of the  
 19 preceding calendar year.

20 (2) In making the classification, each eligible and  
 21 deficit employer's contribution rate is determined in the  
 22 manner set forth below:

23 (a) Each employer is given an "experience factor" which  
 24 is contributions paid since October 1, 1981, minus benefits  
 25 charged on each employer's account since October 1, 1981,

1 divided by the employer's average annual taxable payroll  
2 rounded to the next lower dollar amount for the 3 fiscal  
3 years immediately preceding the computation date. The  
4 computation of the "experience factor" shall be to six  
5 decimal places.

6 (b) Schedules shall be prepared listing all eligible  
7 and deficit employers in inverse numerical order of their  
8 experience factors. There shall be listed on such schedules  
9 for each employer in addition to the experience factor:

10 (i) the amount of the employer's taxable payroll for  
11 the fiscal year ending on the computation date; and

12 (ii) the cumulative total consisting of the sum of the  
13 employer's taxable payroll for the fiscal year ending on the  
14 computation date and the corresponding taxable payrolls for  
15 all other employers preceding that employer on the  
16 schedules.

17 (3) The cumulative taxable payroll amounts listed on  
18 the schedules provided for in 39-51-1218 shall be segregated  
19 into groups that will yield approximately the average tax  
20 rate according to the tax schedule assigned for that  
21 particular taxable year. Each group shall be identified by  
22 the rate class number listed in the table which represents  
23 the percentage limits of each group. Each employer on the  
24 schedules is assigned that contribution rate opposite that  
25 employer's rate class for the tax schedule in effect for the

1 taxable year.

2 (4) (a) If the grouping of rate classes requires the  
3 inclusion of exactly one-half of an employer's taxable  
4 payroll, the employer is assigned the lower of the two rates  
5 designated for the two classes in which the halves of that  
6 employer's taxable payroll are so required.

7 (b) If the group of rate classes requires the inclusion  
8 of a portion other than exactly one-half of an employer's  
9 taxable payroll, the employer is assigned the rate  
10 designated for the class in which the greater part of that  
11 employer's taxable payroll is so required.

12 (c) If one or more employers on the schedules have  
13 experience factors identical to that of the last employer  
14 included in a particular rate class, all such employers are  
15 included in and assigned the contribution rate specified for  
16 such class, notwithstanding the provisions of 39-51-1214.

17 (5) If the taxable payroll amount or the experience  
18 factor or both such taxable payroll amount and experience  
19 factor of any eligible or deficit employer listed on the  
20 schedules is changed, the employer is placed in that  
21 position on the schedules which the employer would have  
22 occupied had that employer's taxable payroll amount or  
23 experience factor as changed been used in determining that  
24 employer's position in the first instance, but such change  
25 does not affect the position or rate classification of any

1 other employer listed on the schedules and does not affect  
2 the rate determination for previous years.

3 (6) Deficit--employers An employer who have has not  
4 filed all required payroll reports or paid all contributions  
5 taxes, penalties, and interest due by the cutoff date must  
6 be assigned the maximum contribution rate in effect for the  
7 taxable year for his classification as an eligible, deficit,  
8 or new employer."

9 **Section 24.** Section 39-51-1214, MCA, is amended to  
10 read:

11 "**39-51-1214.** **Benefit payments chargeable to employer**  
12 **experience rating accounts.** (1) Except for cost  
13 reimbursement, benefits paid shall be charged to the account  
14 of each of the claimant's base period employers. The benefit  
15 charged must be based on the percentage of wages paid by the  
16 employer as compared to the total wages paid by all  
17 employers in the claimant's base period.

18 (2) No charge shall be made to the account of such  
19 covered employer with respect to benefits paid under the  
20 following situations:

21 (a) if paid to a worker who terminated his services  
22 voluntarily without good cause attributable to such covered  
23 employer or who had been discharged for misconduct in  
24 connection with such services;

25 (b) if paid in accordance with the extended benefit

1 program triggered by either national or state indicators; or

2 (c) if the base period employer continues to provide  
3 employment with no reduction in hours or wages; or

4 (d) if benefits are paid to claimants who are in  
5 training approved under 39-51-2307."

6 **Section 25.** Section 39-51-1217, MCA, is amended to  
7 read:

8 "**39-51-1217.** **Schedule of rates assigned based on trust**  
9 **fund reserve.** (1) The rate schedule for each calendar year  
10 is assigned based upon the ratio of the trust fund balance  
11 as of ~~December-31~~ ~~November-30~~ **OCTOBER 31** prior to the rate  
12 year to total wages in covered employment for the 12-month  
13 period ending June 30 prior to the computation date.

14 (2) The ratio at the top of each tax schedule in the  
15 tax table shown in 39-51-1218 represents the minimum fund  
16 level required for a specific tax schedule to be in effect.

17 (3) Employer rates are assigned in accord with the  
18 rates provided in each schedule for eligible~~r~~ ~~unrated~~, and  
19 deficit employers, based upon their experience as defined in  
20 this section.

21 (4) For the calendar year 1990 and each year  
22 thereafter, any employer classified as unrated a new  
23 employer must be assigned a rate equal to the average rate  
24 of contributions paid by employers in the same major  
25 industrial classification for the calendar year preceding

1 the computation date, plus an adjustment for the difference  
 2 between the average tax rate assigned for the previous  
 3 calendar year and the average rate in effect for the current  
 4 calendar year. At no time may an-unrated a new employer be  
 5 assigned a rate lower than 1%. The computation of the  
 6 average rate of contributions in a major industrial  
 7 classification must exclude those employer accounts that are  
 8 not eligible for the computation of an experience rating  
 9 solely by reason of insufficient experience. The department  
 10 shall develop the major industrial classifications for the  
 11 state and shall annually determine the contribution rate for  
 12 each classification."

13 **Section 26.** Section 39-51-1218, MCA, is amended to  
 14 read:

15 **"39-51-1218. Rate schedules.**

16 SCHEDULES OF CONTRIBUTION RATES -- Part I

	Sched.	Sched.	Sched.	Sched.
	I	II	III	IV
19 Minimum Ratio of				
20 Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
21 Average Tax Rate	1.4	1.6	1.8	2.0
22 Rate Class	Contribution Rates For Eligible Employers			
23 1	0.0%	0.1%	0.3%	0.5%

1	2	0.1	0.3	0.5	0.7
2	3	0.3	0.5	0.7	0.9
3	4	0.5	0.7	0.9	1.1
4	5	0.7	0.9	1.1	1.3
5	6	0.9	1.1	1.3	1.5
6	7	1.1	1.3	1.5	1.7
7	8	1.3	1.5	1.7	1.9
8	9	1.5	1.7	1.9	2.1
9	10	1.7	1.9	2.1	2.3
10		<b>Contribution-Rates-For-Unrated-Employers</b>			
11		<b>2.0%</b>	<b>2.2%</b>	<b>2.4%</b>	<b>2.6%</b>
12	Rate Class	Contribution Rates For Deficit Employers			
13	1	3.2%	3.4%	3.6%	3.8%
14	2	3.4	3.6	3.8	4.0
15	3	3.6	3.8	4.0	4.2
16	4	3.8	4.0	4.2	4.4
17	5	4.0	4.2	4.4	4.6
18	6	4.2	4.4	4.6	4.8
19	7	4.4	4.6	4.8	5.0
20	8	4.6	4.8	5.0	5.2
21	9	4.8	5.0	5.2	5.4
22	10	6.4	6.4	6.4	6.4



1 SCHEDULES OF CONTRIBUTION RATES -- Part II

2 Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
3 V	VI	VII	VIII	IX	X
4 (.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
5 2.2	2.4	2.6	2.8	3.0	3.2

6 Contribution Rates For Eligible Employers

7 0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
8 0.9	1.1	1.3	1.5	1.7	1.9
9 1.1	1.3	1.5	1.7	1.9	2.1
10 1.3	1.5	1.7	1.9	2.1	2.3
11 1.5	1.7	1.9	2.1	2.3	2.5
12 1.7	1.9	2.1	2.3	2.5	2.7
13 1.9	2.1	2.3	2.5	2.7	2.9
14 2.1	2.3	2.5	2.7	2.9	3.1
15 2.3	2.5	2.7	2.9	3.1	3.3
16 2.5	2.7	2.9	3.1	3.3	3.5

17 Contribution-Rates-For-Unrated-Employers

18 2-8%	3-8%	3-2%	3-4%	3-6%	3-8%
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19 Contribution Rates For Deficit Employers

20 4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
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1 4.2	4.4	4.6	4.8	5.0	5.2
2 4.4	4.6	4.8	5.0	5.2	5.4
3 4.6	4.8	5.0	5.2	5.4	5.6
4 4.8	5.0	5.2	5.4	5.6	5.8
5 5.0	5.2	5.4	5.6	5.8	6.0
6 5.2	5.4	5.6	5.8	6.0	6.2
7 5.4	5.6	5.8	6.0	6.2	6.4
8 5.6	5.8	6.0	6.2	6.4	6.4
9 6.4	6.4	6.4	6.4	6.4	6.4"

10 **Section 27.** Section 39-51-3201, MCA, is amended to  
 11 read:

12 **"39-51-3201. Making false statement or representation**  
 13 **or failing to disclose material fact in order to obtain or**  
 14 **increase benefits -- administrative penalty and remedy. (1)**  
 15 A person who makes a false statement or representation  
 16 knowing it to be false or knowingly fails to disclose a  
 17 material fact in order to obtain or increase any benefit or  
 18 other payment under this chapter or under an employment  
 19 security law of any other state or territory or the federal  
 20 government, either for himself or for any other person, is:  
 21 (1)(a) disqualified for benefits thereafter for a  
 22 period of not more than 52 weeks, beginning with the first  
 23 compensable week following the date of such determination by  
 24 the department, the length of time of the disqualification  
 25 as herein described to be determined by the department in

1 accordance with the severity of each case; and  
 2 ~~(2)(b)~~ required to repay to the department, either  
 3 directly or as authorized by the department, by offset of  
 4 future benefits to which he may be entitled, or by a  
 5 combination of both such methods, a sum equal to the amount  
 6 wrongfully received by him, ~~plus interest-at-the-rate-of-18%~~  
 7 ~~a--year--computed--from--the--time--the--false--statement--or~~  
 8 ~~representation--or--the--failure--to--disclose--a--material--fact~~  
 9 ~~occurred,--except--that--future--benefits--may--not--be--used--to~~  
 10 ~~offset--the--interest--due:~~ THE DEPARTMENT MAY ASSESS a penalty  
 11 equivalent-to-33% NOT TO EXCEED 100% of the fraudulently  
 12 obtained benefits, except that future benefits may not be  
 13 used to offset the penalty due. However, he is not required  
 14 to repay any amount wrongfully obtained more than 5 years  
 15 prior to the date of the department's determination that he  
 16 made false statements, willful nondisclosure, or  
 17 misrepresentation.  
 18 (2) All money accruing from the penalty under  
 19 subsection (1)(b) must be deposited in the federal special  
 20 revenue account. Money deposited in that account may be  
 21 appropriated to the department to be used to detect and  
 22 collect unpaid taxes and overpayments of benefits to the  
 23 extent that federal grant revenues are inadequate for these  
 24 purposes. Money in the account not appropriated for these  
 25 purposes must be transferred by the department to the

1 unemployment insurance trust fund at the end of each fiscal  
 2 year."  
 3 **Section 28.** Section 39-51-3202, MCA, is amended to  
 4 read:  
 5 "39-51-3202. Making false statement or representation  
 6 or failing to disclose material fact in order to obtain or  
 7 increase benefits -- criminal penalty. (1) A person who, in  
 8 order to obtain or increase for personal gain or for any  
 9 other person benefits under this chapter or under an  
 10 employment security law of any other state or territory or  
 11 the federal government, knowingly makes a false statement or  
 12 representation or knowingly fails to disclose a material  
 13 fact is guilty of a crime under 45-7-203, and the department  
 14 may cause criminal proceedings to be initiated against the  
 15 person.  
 16 (2) A person will be required to repay to the  
 17 department an amount as determined by 39-51-3201~~(2)~~(1)(b).  
 18 (3) For purposes of this section, restitution awarded  
 19 under this section must include a sum equal to the amount  
 20 wrongfully received, plus ~~18%--interest--a--year,~~ THE  
 21 DEPARTMENT MAY ASSESS a penalty equivalent--to--33% NOT TO  
 22 EXCEED 100% of the amount wrongfully received.  
 23 ~~notwithstanding--the--provisions--of--25-9-205.~~ All money  
 24 accruing from the penalty must be deposited in the federal  
 25 special revenue account. Money deposited in that account may

1 be appropriated to the department to be used to detect and  
 2 collect unpaid taxes and overpayments of benefits to the  
 3 extent that federal grant revenues are inadequate for these  
 4 purposes. Money in the account not appropriated for these  
 5 purposes must be transferred by the department to the  
 6 unemployment insurance trust fund at the end of each fiscal  
 7 year."

8 **Section 29.** Section 39-51-2107, MCA, is amended to  
 9 read:

10 **"39-51-2107.** Services for remuneration to be performed  
 11 during benefit year as condition for receiving benefits in  
 12 second benefit year -- amount required. An individual who  
 13 received benefits during a benefit year must perform  
 14 services for remuneration ~~after the beginning of that year~~  
 15 following the initial separation from employment in the  
 16 previous benefit year as a condition for receiving benefits  
 17 in a second benefit year. ~~The service may be in either~~  
 18 ~~covered or noncovered employment.~~ The service must  
 19 constitute employment as defined in 39-51-203 and 39-51-204.  
 20 However, the individual must have earned the lesser of  
 21 three-thirteenths of his high quarter of his second benefit  
 22 year or 6 times his weekly benefit amount of that same  
 23 year."

24 **Section 30.** Section 39-51-2302, MCA, is amended to  
 25 read:

1 **"39-51-2302. Disqualification for leaving work without**  
 2 **good cause.** (1) An individual shall be disqualified for  
 3 benefits if he has left work without good cause attributable  
 4 to his employment.

5 (2) He may not be disqualified if the department finds  
 6 that he left his employment because of personal illness or  
 7 injury not associated with misconduct ~~or left his employment~~  
 8 upon the advice of a licensed and practicing physician and,  
 9 after recovering from his illness or injury when recovery is  
 10 certified by a licensed and practicing physician, he  
 11 returned to his employer and offered his service and his  
 12 regular or comparable suitable work was not available, if so  
 13 found by the department, provided he is otherwise eligible.

14 (3) To requalify for benefits, an individual must  
 15 perform services other than self-employment for which  
 16 remuneration is received equal to or in excess of six times  
 17 his weekly benefit amount subsequent to the week in which  
 18 the act causing the disqualification occurred unless he has  
 19 been in regular attendance at an educational institution  
 20 accredited by the state of Montana for at least 3  
 21 consecutive months from the date of his enrollment."

22 ~~Section 33. Section 39-51-2303, MCA, is amended to~~  
 23 ~~read:~~

24 ~~"39-51-2303. Disqualification for discharge or~~  
 25 ~~suspension due to misconduct. An individual shall be~~

1 ~~disqualified--for--benefits--after---being---discharged~~ or  
2 ~~suspended;~~

3 ~~{1}--for--misconduct--connected--with--the--individual's--work~~  
4 ~~or---affecting---the---individual's---employment--until--the~~  
5 ~~individual---has---performed---services,---other---than~~  
6 ~~self-employment,--for--which--remuneration--is--received--equal--to~~  
7 ~~or--in--excess--of--eight--times--the--individual's--weekly--benefit~~  
8 ~~amount--subsequent--to--the--week--in--which--the--act--causing--the~~  
9 ~~disqualification--occurred;~~

10 ~~{2}--for---gross---misconduct---connected---with---the~~  
11 ~~individual's--work--or--committed--on--the--employer's--premises,~~  
12 ~~as--determined--by--the--department,--for--a--period--of--52--weeks;"~~

13 NEW SECTION. Section 31. Repealer. Section 39-51-2308,  
14 MCA, is repealed.

15 NEW SECTION. Section 32. Severability. If a part of  
16 [this act] is invalid, all valid parts that are severable  
17 from the invalid part remain in effect. If a part of [this  
18 act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are  
20 severable from the invalid applications.

21 NEW SECTION. Section 33. Effective date. [This act] is  
22 effective July 1, 1991.

-End-