

HOUSE BILL NO. 812

INTRODUCED BY WANZENRIED, HARP, DRISCOLL, WILLIAMS

IN THE HOUSE

FEBRUARY 13, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 22, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

POSTED ON CONSENT CALENDAR.

FEBRUARY 23, 1991                   CONSENT CALENDAR, QUESTIONS AND ANSWERS.

ENGROSSING REPORT.

FEBRUARY 26, 1991                   THIRD READING, PASSED.  
AYES, 96; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

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

MARCH 16, 1991                   SECOND READING, CONCURRED IN.

MARCH 18, 1991                   THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1991                   RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 812  
 2 INTRODUCED BY WONZENRIED, HARP *W. H. H.*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CERTAIN  
 5 EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES  
 6 FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION  
 7 PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123,  
 8 MCA."  
 9

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

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

12 "39-51-201. General definitions. As used in this  
 13 chapter, unless the context clearly requires otherwise, the  
 14 following definitions apply:

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

18 (2) "Base period" means the first four of the last five  
 19 completed calendar quarters immediately preceding the first  
 20 day of an individual's benefit year. However, in the case of  
 21 a combined-wage claim pursuant to the arrangement approved  
 22 by the secretary of labor of the United States, the base  
 23 period shall be that applicable under the unemployment law  
 24 of the paying state. For an individual who fails to meet the  
 25 qualifications of 39-51-2105 or a similar statute of another

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

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

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

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

24 (6) "Calendar quarter" means the period of 3  
 25 consecutive calendar months ending on March 31, June 30,



1 September 30, or December 31.

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

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

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

1 or by such agent or employee, provided the employing unit  
2 has actual or constructive knowledge of the work.

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

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

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

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

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

25 (a) has been and will continue to be free from control

1 or direction over the performance of the services, both  
2 under his contract and in fact; and

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

5 (15) (a) "Institution of higher education", for the  
6 purposes of this part, means an educational institution  
7 which:

8 (i) admits as regular students only individuals having  
9 a certificate of graduation from a high school or the  
10 recognized equivalent of such a certificate;

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

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

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

20 (b) Notwithstanding any of the foregoing provisions of  
21 this subsection, all colleges and universities in this state  
22 are institutions of higher education for purposes of this  
23 part.

24 (16) "State" includes, in addition to the states of the  
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Unemployment insurance administration fund" means  
3 the unemployment insurance administration fund established  
4 by this chapter from which administrative expenses under  
5 this chapter shall be paid.

6 (18) (a) "Wages" means all remuneration payable for  
7 personal services, including commissions and bonuses, the  
8 cash value of all remuneration payable in any medium other  
9 than cash, and backpay received pursuant to a dispute  
10 related to employment. The reasonable cash value of  
11 remuneration payable in any medium other than cash shall be  
12 estimated and determined in accordance with rules prescribed  
13 by the department.

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

15 (i) the amount of any payment made by the employer, if  
16 the payment was made under a plan established for the  
17 employees in general or for a specific class or classes of  
18 employees, to or on behalf of the employee for:

19 (A) retirement;

20 (B) sickness or accident disability, but in the case of  
21 payments made by an employer directly to an employee, only  
22 those payments made under a workers' compensation law are  
23 excluded from "wages";

24 (C) medical and hospitalization expenses in connection  
25 with sickness or accident disability; or

1 (D) death;

2 (ii) remuneration paid by any county welfare office from  
3 public assistance funds for services performed at the  
4 direction and request of such county welfare officer; or  
5 (iii) employee expense reimbursements or allowances for  
6 meals, lodging, travel, subsistence, or other expenses, as  
7 set forth in department rules.

8 (19) "Week" means a period of 7 consecutive calendar  
9 days ending at midnight on Saturday.

10 (20) An individual's "weekly benefit amount" means the  
11 amount of benefits the individual would be entitled to  
12 receive for 1 week of total unemployment."

13 **Section 2.** Section 39-71-123, MCA, is amended to read:

14 **"39-71-123. Wages defined.** (1) "Wages" means the gross  
15 remuneration paid in money, or in a substitute for money,  
16 for services rendered by an employee. Wages include but are  
17 not limited to:

18 (a) commissions, bonuses, and remuneration at the  
19 regular hourly rate for overtime work, holidays, vacations,  
20 and sickness periods;

21 (b) board, lodging, rent, or housing if it constitutes  
22 a part of the employee's remuneration and is based on its  
23 actual value; and

24 (c) payments made to an employee on any basis other  
25 than time worked, including but not limited to piecework, an

1 incentive plan, or profit-sharing arrangement.

2 (2) Wages do not include:

3 (a) employee travel expense reimbursements or  
4 allowances for meals, lodging, travel, and subsistence, and  
5 other expenses, as set forth in department rules

6 (b) special rewards for individual invention or  
7 discovery;

8 (c) tips and other gratuities received by the employee  
9 in excess of those documented to the employer for tax  
10 purposes;

11 (d) contributions made by the employer to a group  
12 insurance or pension plan; or

13 (e) vacation or sick leave benefits accrued but not  
14 paid.

15 (3) For compensation benefit purposes, the average  
16 actual earnings for the four pay periods immediately  
17 preceding the injury are the employee's wages, except if:

18 (a) the term of employment for the same employer is  
19 less than four pay periods, in which case the employee's  
20 wages are the hourly rate times the number of hours in a  
21 week for which the employee was hired to work; or

22 (b) for good cause shown by the claimant, the use of  
23 the four pay periods does not accurately reflect the  
24 claimant's employment history with the employer, in which  
25 case the insurer may use additional pay periods.

1       (4) (a) For the purpose of calculating compensation  
2 benefits for an employee working concurrent employments, the  
3 average actual wages must be calculated as provided in  
4 subsection (3).

5       (b) The compensation benefits for a covered volunteer  
6 must be based on the average actual wages in his regular  
7 employment, except self-employment as a sole proprietor or  
8 partner who elected not to be covered, from which he is  
9 disabled by the injury incurred.

10       (c) The compensation benefits for an employee working  
11 at two or more concurrent remunerated employments must be  
12 based on the aggregate of average actual wages of all  
13 employments, except self-employment as a sole proprietor or  
14 partner who elected not to be covered, from which the  
15 employee is disabled by the injury incurred."

-End-

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 2 INTRODUCED BY UNIDENTIFIED HARP *Amiel Walker*

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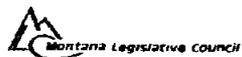
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THIRD READING  
 HB 812  
 CONSENT CALENDAR

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1 or direction over the performance of the services, both  
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4 occupation, profession, or business.

5 (15) (a) "Institution of higher education", for the  
6 purposes of this part, means an educational institution  
7 which:

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9 a certificate of graduation from a high school or the  
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17 employees in general or for a specific class or classes of  
18 employees, to or on behalf of the employee for:

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20 (B) sickness or accident disability, but in the case of  
21 payments made by an employer directly to an employee, only  
22 those payments made under a workers' compensation law are  
23 excluded from "wages";

24 (C) medical and hospitalization expenses in connection  
25 with sickness or accident disability; or

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3 public assistance funds for services performed at the  
4 direction and request of such county welfare office; or

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10 purposes;

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15 (3) For compensation benefit purposes, the average  
16 actual earnings for the four pay periods immediately  
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20 wages are the hourly rate times the number of hours in a  
21 week for which the employee was hired to work; or

22 (b) for good cause shown by the claimant, the use of  
23 the four pay periods does not accurately reflect the  
24 claimant's employment history with the employer, in which  
25 case the insurer may use additional pay periods.

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8 partner who elected not to be covered, from which he is  
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-End-

HOUSE BILL NO. 812

INTRODUCED BY WANZENRIED, HARP, DRISCOLL, WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CERTAIN EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123, MCA."

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state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

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(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current 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 period is the period applicable under the unemployment law of the paying state.

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REFERENCE BILL  
HB 812



1 September 30, or December 31.

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10 partnership, association, trust, estate, joint-stock  
11 company, insurance company, or corporation, whether domestic  
12 or foreign, or the receiver, trustee in bankruptcy, trustee  
13 or successor thereof, or the legal representative of a  
14 deceased person which has or had in its employ one or more  
15 individuals performing services for it within this state,  
16 except as provided under subsections (8) and (9) of  
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18 state for any employing unit which maintains two or more  
19 separate establishments within this state are considered to  
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6 purposes of this part, means an educational institution  
7 which:

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14 awards a bachelor's or higher degree or provides a program  
15 which is acceptable for full credit toward such a degree, a  
16 program of postgraduate or postdoctoral studies, or a  
17 program of training to prepare students for gainful  
18 employment in a recognized occupation; and

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

20 (b) Notwithstanding any of the foregoing provisions of  
21 this subsection, all colleges and universities in this state  
22 are institutions of higher education for purposes of this  
23 part.

24 (16) "State" includes, in addition to the states of the  
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Unemployment insurance administration fund" means  
3 the unemployment insurance administration fund established  
4 by this chapter from which administrative expenses under  
5 this chapter shall be paid.

6 (18) (a) "Wages" means all remuneration payable for  
7 personal services, including commissions and bonuses, the  
8 cash value of all remuneration payable in any medium other  
9 than cash, and backpay received pursuant to a dispute  
10 related to employment. The reasonable cash value of  
11 remuneration payable in any medium other than cash shall be  
12 estimated and determined in accordance with rules prescribed  
13 by the department.

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

15 (i) the amount of any payment made by the employer, if  
16 the payment was made under a plan established for the  
17 employees in general or for a specific class or classes of  
18 employees, to or on behalf of the employee for:

19 (A) retirement;

20 (B) sickness or accident disability, but in the case of  
21 payments made by an employer directly to an employee, only  
22 those payments made under a workers' compensation law are  
23 excluded from "wages";

24 (C) medical and hospitalization expenses in connection  
25 with sickness or accident disability; or

- 1 (D) death;
- 2 (ii) remuneration paid by any county welfare office from
- 3 public assistance funds for services performed at the
- 4 direction and request of such county welfare officer; or
- 5 (iii) employee expense reimbursements or allowances for
- 6 meals, lodging, travel, subsistence, or other expenses, as
- 7 set forth in department rules.

8 (19) "Week" means a period of 7 consecutive calendar  
9 days ending at midnight on Saturday.

10 (20) An individual's "weekly benefit amount" means the  
11 amount of benefits the individual would be entitled to  
12 receive for 1 week of total unemployment."

13 **Section 2.** Section 39-71-123, MCA, is amended to read:

14 **"39-71-123. Wages defined.** (1) "Wages" means the gross  
15 remuneration paid in money, or in a substitute for money,  
16 for services rendered by an employee. Wages include but are  
17 not limited to:

18 (a) commissions, bonuses, and remuneration at the  
19 regular hourly rate for overtime work, holidays, vacations,  
20 and sickness periods;

21 (b) board, lodging, rent, or housing if it constitutes  
22 a part of the employee's remuneration and is based on its  
23 actual value; and

24 (c) payments made to an employee on any basis other  
25 than time worked, including but not limited to piecework, an

1 incentive plan, or profit-sharing arrangement.

2 (2) Wages do not include:

3 (a) employee travel expense reimbursements or  
4 allowances for meals, lodging, travel, and subsistence, and  
5 other expenses, as set forth in department rules;

6 (b) special rewards for individual invention or  
7 discovery;

8 (c) tips and other gratuities received by the employee  
9 in excess of those documented to the employer for tax  
10 purposes;

11 (d) contributions made by the employer to a group  
12 insurance or pension plan; or

13 (e) vacation or sick leave benefits accrued but not  
14 paid.

15 (3) For compensation benefit purposes, the average  
16 actual earnings for the four pay periods immediately  
17 preceding the injury are the employee's wages, except if:

18 (a) the term of employment for the same employer is  
19 less than four pay periods, in which case the employee's  
20 wages are the hourly rate times the number of hours in a  
21 week for which the employee was hired to work; or

22 (b) for good cause shown by the claimant, the use of  
23 the four pay periods does not accurately reflect the  
24 claimant's employment history with the employer, in which  
25 case the insurer may use additional pay periods.

1       (4) (a) For the purpose of calculating compensation  
2 benefits for an employee working concurrent employments, the  
3 average actual wages must be calculated as provided in  
4 subsection (3).

5       (b) The compensation benefits for a covered volunteer  
6 must be based on the average actual wages in his regular  
7 employment, except self-employment as a sole proprietor or  
8 partner who elected not to be covered, from which he is  
9 disabled by the injury incurred.

10       (c) The compensation benefits for an employee working  
11 at two or more concurrent remunerated employments must be  
12 based on the aggregate of average actual wages of all  
13 employments, except self-employment as a sole proprietor or  
14 partner who elected not to be covered, from which the  
15 employee is disabled by the injury incurred."

-End-