

SENATE BILL 103

Introduced by Noble, et al.

1/15	Introduced
1/16	Referred to Labor & Employment Relations
1/16	First Reading
1/22	Fiscal Note Requested
1/29	Fiscal Note Received
1/29	Fiscal Note Printed
1/31	Hearing
1/31	Tabled in Committee

1 *Senate* BILL NO. 103
 2 INTRODUCED BY *Frank Dapp* *Sen. NATH*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING CAFETERIA
 5 PLAN BENEFITS FROM THE DEFINITION OF WAGES FOR UNEMPLOYMENT
 6 INSURANCE AND WORKERS' COMPENSATION; AMENDING SECTIONS
 7 39-51-201 AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE
 8 EFFECTIVE DATE."

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~~ is that applicable under the unemployment
 24 law of the paying state. For an individual who fails to meet
 25 the qualifications of 39-51-2105 or a similar statute of

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

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

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

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

25 (6) "Calendar quarter" means the period of 3



1 consecutive calendar months ending on March 31, June 30,
2 September 30, or December 31.

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

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

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

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

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

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

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

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

25 (14) "Independent contractor" means an individual who

1 renders service in the course of an occupation and:

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

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

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

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

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

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

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

22 (b) Notwithstanding any of the foregoing provisions of
23 this subsection (15), all colleges and universities in this
24 state are institutions of higher education for purposes of
25 this part.

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

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

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

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

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

21 (A) retirement;

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

1 (C) medical and hospitalization expenses in connection
2 with sickness or accident disability; or

3 (D) death; or

4 (E) payments made pursuant to an authorized deferred
5 compensation plan;

6 (ii) the amount of any payment made to or on behalf of
7 an employee or his beneficiary under a cafeteria plan within
8 the meaning of 26 U.S.C. 125; or

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

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

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

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

18 **"39-71-123. Wages defined.** (1) "Wages" means the gross
19 remuneration paid in money, or in a substitute for money,
20 for services rendered by an employee. Wages include but are
21 not limited to:

22 (a) commissions, bonuses, and remuneration at the
23 regular hourly rate for overtime work, holidays, vacations,
24 and sickness periods;

25 (b) board, lodging, rent, or housing if it constitutes

1 a part of the employee's remuneration and is based on its
2 actual value; and

3 (c) payments made to an employee on any basis other
4 than time worked, including but not limited to piecework, or
5 an incentive plan, ~~or profit-sharing arrangement.~~

6 (2) Wages do not include:

7 (a) employee travel expense reimbursements or
8 allowances for meals, lodging, travel, and subsistence;

9 (b) special rewards for individual invention or
10 discovery;

11 (c) tips and other gratuities received by the employee
12 in excess of those documented to the employer for tax
13 purposes;

14 (d) contributions made by the employer or the employee
15 to a group insurance or pension plan; or

16 (e) vacation or sick leave benefits accrued but not
17 paid; or

18 (f) any payment made to or on behalf of an employee or
19 his beneficiary under a cafeteria plan within the meaning of
20 26 U.S.C. 125.

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

24 (a) the term of employment for the same employer is
25 less than four pay periods, in which case the employee's

1 wages are the hourly rate times the number of hours in a
2 week for which the employee was hired to work; or

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

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

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

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

22 NEW SECTION. **Section 3.** Effective date. [This act] is
23 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0103, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to exclude cafeteria plan benefits from the definition of wages for Unemployment Insurance and Workers' Compensation.

ASSUMPTIONS:

1. There is insufficient data to estimate the amount of payments made to cafeteria plans on behalf of employees.
2. Amounts paid to cafeteria plans would no longer be considered available for purposes of UI taxes and benefits, and Workers' Compensation premiums and benefits.
3. The State Group Insurance Plan includes approximately \$3,800,000 of cafeteria benefits and an average combined Workers' Compensation and Unemployment Insurance rate of 2.28%.
4. The Montana University System Group Insurance Plan includes approximately \$5,500,000 of cafeteria benefits and an average combined Workers' Compensation and Unemployment Insurance rate of 1.64%.

FISCAL IMPACT:

Expenditures:

1. Unemployment Insurance and Workers' Compensation benefit payments would be marginally reduced.
2. The State Group Health Insurance Plan and the MUS Health Insurance Plan currently include a I.R.C. Section 125 cafeteria plan. Passage of this bill would reduce state expenditures for personal services by excluding cafeteria benefits from the definition of wages. Because UI and WC taxes are budgeted based on salary prior to cafeteria reductions, the savings would not decrease budgeted amounts but would generate lower actual expenditures by approximately \$177,000 per fiscal year, all funds.

Revenues:

Unemployment Insurance taxes and Workers' Compensation premiums would be marginally reduced.

Net Effect:

The net effect to the UI trust fund and the State Mutual Insurance Compensation Fund for cafeteria plans other than the state plans can not be estimated, but is not expected to be significant.

TECHNICAL NOTES:

Administrative and benefit expenses for purposes of Unemployment Insurance are also payable from sources outside the chapter being amended by SB0103. The following technical revisions are suggested:

Page 4, line 16: following "must be paid.", insert: "except as provided by state or federal law."

Page 6, line 7: following "must be paid.", insert: "except as provided by state or federal law."


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

1-28-91
DATE


JERRY NOBLE, PRIMARY SPONSOR
DATE

1/29/91
DATE

Fiscal Note for SB0103, as introduced.

SB 103