

1 *House* BILL NO. *95*  
 2 INTRODUCED BY *Magnus Sheldon W. Baugh Courroy*  
 3 *Conrad Palmer Ellis of Humboldt*  
 4 *McKibben* A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
 5 87-110 AND 87-148, R.C.M. 1947, TO COVER ALL PUBLIC  
 6 EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAWS."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 87-110, R.C.M. 1947, is amended to  
10 read as follows:

11 "87-110. Period, election and termination of  
 12 employer's coverage. (a) Any employing unit which is or  
 13 becomes an employer subject to this act within any calendar  
 14 year, shall be subject to this act during the whole of such  
 15 calendar year, except that this subsection shall not apply  
 16 to an employing unit electing coverage as provided for in  
 17 ~~subsections~~ subsection (c) ~~and (d)~~ of this section.

18 (b) Except as otherwise provided in subsection (c) ~~and~~  
 19 ~~(d)~~ of this section an employing unit shall cease to be an  
 20 employer subject to this act only as of the first day of  
 21 January, of any calendar year, only if it files with the  
 22 division prior to the last day of February, of such year, a  
 23 written application for termination of coverage, and the  
 24 division finds that the total wages payable for employment  
 25 by said employer in the preceding calendar year did not

1 exceed five hundred dollars (\$500). For the purpose of this  
 2 subsection, the two (2) or more employing units mentioned in  
 3 paragraph (2) or (3) of section 87-148 (i) shall be treated  
 4 as a single employing unit.

5 (c) An employing unit not otherwise subject to this  
 6 act, or any employing unit for which services are performed  
 7 that do not constitute employment as defined in this act,  
 8 may file with the division, a written election that all such  
 9 services performed by individuals in its employ in one (1)  
 10 or more distinct establishments or places of business shall  
 11 be deemed to constitute employment for all purposes of this  
 12 act for not less than two (2) calendar years. Upon the  
 13 written approval of such election by the division, such  
 14 services shall be deemed to constitute employment subject to  
 15 this act from and after the date stated in such approval.  
 16 Such services shall cease to be deemed employment subject  
 17 hereto as of January 1, of any calendar year subsequent to  
 18 such two (2) calendar years only if at least thirty (30)  
 19 days prior to such first day of January such employing unit  
 20 has filed with the division a written notice to that  
 21 effect."

22 ~~(d) Any political subdivision of this state may elect~~  
 23 ~~to cover under this act service performed by employees in~~  
 24 ~~all the hospitals and institutions of higher education as~~  
 25 ~~defined in section 87-148 (a) and (b), operated by such~~

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~~political subdivision. The election may exclude any services described in section 87-148-(j)-(7)-(A). Election is to be made by filing with the division a written notice of such election. The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109-(b)-(4). An election under this section may be terminated by filing with the division written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.~~

Section 2. Section 87-148, R.C.M. 1947, is amended to read as follows:

"87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

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

(b) "Benefits" means the money payments payable to an

individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that 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 shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that 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 shall be that applicable under the unemployment law of the paying state.

(e) "Calendar quarter" means the period of three (3)

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

3 (f) "Division" means the employment security division  
4 of the department of labor and industry provided for in  
5 Title 82A, chapter 10, R.C.M. 1947.

6 (g) "Contributions" means the money payments to the  
7 state unemployment compensation fund required by this act.

8 (h) "Employing unit" means any individual or type of  
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, or the legal representative of a  
15 deceased person, which has or subsequent to January 1, 1936,  
16 had in its employ one (1) or more individuals performing  
17 services for it within this state; and all individuals  
18 performing services within this state for any employing unit  
19 which maintains two (2) or more separate establishments  
20 within this state shall be deemed to be employed by a single  
21 employing unit for all the purposes of this act. Each  
22 individual employed to perform or assist in performing the  
23 work of any agent or employee of an employing unit shall be  
24 deemed to be employed by such employing unit for the  
25 purposes of this act, whether such individual was hired or

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

4 (i) "Employer" means:

5 (1) Any employing unit whose total annual payroll  
6 within either the current or preceding calendar year,  
7 exceeds the sum of five hundred dollars (\$500);

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

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

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

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1 act for full tax credit against the tax imposed by the  
2 Federal Unemployment Tax Act, is required, pursuant to such  
3 act, to be an "employer" under this act.

4 (5) Any employing unit which, having become an employer  
5 under paragraph (1), (2), or (3), or (4), has not, under  
6 section 87-110, ceased to be an employer subject to this  
7 act; or

8 (6) For the effective period of its election pursuant  
9 to section 87-110 (c) and (d) any other employing unit which  
10 has elected to become fully subject to this act.

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

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

19 (A) The service is localized in this state; or

20 (B) The service is not localized in any state but some  
21 of the service is performed in this state and (I) the base  
22 of operations, or, if there is no base of operations, then  
23 the place from which such service is directed or controlled,  
24 is in this state; or (II) the base of operations or place  
25 from which such service is directed or controlled is not in

1 any state in which some part of the service is performed,  
2 but the individual's residence is in this state.

3 (3) Service not covered under paragraph (2) of this  
4 subsection, and performed entirely without this state with  
5 respect to no part of which contributions are required and  
6 paid under an unemployment compensation law of any other  
7 state or of the federal government, shall be deemed to be  
8 employment subject to this act if the individual performing  
9 such services is a resident of this state and the division  
10 approves the election of the employing unit for whom such  
11 services are performed that the entire service of such  
12 individual shall be deemed to be employment subject to this  
13 act.

14 (4) Service shall be deemed to be localized within a  
15 state if--

16 (A) The service is performed entirely within such  
17 state; or

18 (B) The service is performed both within and without  
19 such state, but the service performed without such state is  
20 incidental to the individual's service within the state, for  
21 example, is temporary or transitory in nature or consists of  
22 isolated transactions.

23 (5) Services performed by an individual for wages shall  
24 be deemed to be employment subject to this act unless and  
25 until it is shown to the satisfaction of the division that:

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

4 (B) Such service is either outside the usual course of  
5 the business for which such service is performed, or that  
6 such service is performed outside of all the places of  
7 business of the enterprise for which such service is  
8 performed; and

9 (C) Such individual is customarily engaged in an  
10 independently established trade, occupation, profession or  
11 business.

12 (6) The term "employment" shall include service  
13 performed after December 31, 1971, by an individual in the  
14 employ of this state or any of its instrumentalities (or in  
15 the employ of this state and one (1) or more other states or  
16 their instrumentalities) for a hospital or institution of  
17 higher education located in this state. Effective after  
18 December 31, 1974, the term "employment" shall include  
19 service performed by all individuals in the employ of this  
20 state, or any of the political subdivisions thereof, or of  
21 any of its instrumentalities (or in the employ of this  
22 state, or any of the political subdivisions thereof, and one  
23 (1) or more other states or their instrumentalities or  
24 political subdivisions).

25 (7) The term "employment" shall include service

1 performed after December 31, 1971, by an individual in the  
2 employ of a religious, charitable, scientific, literary, or  
3 educational organization.

4 (A) For the purposes of paragraph (7) of this  
5 subsection the term "employment" does not apply to service  
6 performed:

7 (1) In the employ of a church or convention or  
8 association of churches, or an organization which is  
9 operated primarily for religious purposes and which is  
10 operated, supervised, controlled, or principally supported  
11 by a church or convention or association of churches; or

12 (2) By a duly ordained, commissioned, or licensed  
13 minister of a church in the exercise of his ministry or by a  
14 member of a religious order in the exercise of duties  
15 required by such order; or

16 (3) In the employ of a school which is not an  
17 institution of higher education; or

18 (4) In a facility conducted for the purpose of  
19 carrying out a program of rehabilitation for individuals  
20 whose earning capacity is impaired by age or physical or  
21 mental deficiency or injury or providing remunerative work  
22 for individuals who because of their impaired physical or  
23 mental capacity cannot be readily absorbed in the  
24 competitive labor market by an individual receiving such  
25 rehabilitation or remunerative work; or

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1 (5) Services performed as part of an unemployment  
2 work-relief or work-training program assisted or financed in  
3 whole or in part by any federal agency or any agency of a  
4 state or political subdivision thereof, by an individual  
5 receiving such work relief or work training; or

6 (6) Services performed for a hospital in a state  
7 prison or other state correctional institution by an inmate  
8 of the prison or correctional institution.

9 (8) The term "employment" shall include the service of  
10 an individual who is a citizen of the United States,  
11 performed outside the United States (except in Canada or the  
12 Virgin Islands), after December 31, 1971, in the employ of  
13 an American employer (other than service which is deemed  
14 "employment" under the provisions of subparagraphs (2) or  
15 (4) of this subsection or the parallel provisions of another  
16 state's law), if:

17 (A) The employer's principal place of business in the  
18 United States is located in this state; or

19 (B) The employer has no place of business in the United  
20 States, but

21 (1) The employer is an individual who is a resident  
22 of this state; or

23 (2) The employer is a corporation which is organized  
24 under the laws of this state; or

25 (3) The employer is a partnership or a trust and the

1 number of the partners or trustees who are residents of this  
2 state is greater than the number who are residents of any  
3 other state; or

4 (C) None of the criteria of divisions (A) and (B) of  
5 this subparagraph is met but the employer has elected  
6 coverage in this state or, the employer having failed to  
7 elect coverage in any state, the individual has filed a  
8 claim for benefits, based on such service, under the law of  
9 this state.

10 (D) An "American employer," for purposes of this  
11 paragraph, means a person who is:

12 (1) An individual who is a resident of the United  
13 States; or

14 (2) A partnership if two-thirds (2/3) or more of the  
15 partners are residents of the United States; or

16 (3) A trust, if all of the trustees are residents of  
17 the United States; or

18 (4) A corporation organized under the laws of the  
19 United States or of any state.

20 (9) The term "employment" shall not include:

21 (A) Agricultural labor; the term "agricultural labor"  
22 includes all services performed prior to January 1, 1972,  
23 which was agricultural labor as defined in this subparagraph  
24 prior to such date, and remunerated services performed after  
25 December 31, 1971:

For remainder of HB095 contact the Historical Society.

STATE OF MONTANA

REQUEST NO. 81-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 75, there is hereby submitted a Fiscal Note for House Bill 95 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 95 extends unemployment compensation laws to cover all public employees.

ASSUMPTIONS:

- 1. House Bill 95 would extend coverage to city and county employees. State employees are presently covered.
2. A .4% unemployment compensation tax on wages will be levied.
3. Operating and administrative expenses will be absorbed by the federal government.

FISCAL IMPACT:

Table with 3 columns: Description, FY 76, FY 77. Rows include: Estimated increase in employment Security revenue by source (Counties: \$175,000, Cities: 165,000; Total: \$340,000); Estimated increase in employment Security benefits and claims paid (\$340,000); Net impact on state government (0).

LOCAL IMPACT:

Enactment of House Bill 95 will result in an estimated \$710,000 statewide local government increase in tax collections during the biennium.

Michael G. Bellinger (Signature)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: January 29, 1975



Approved by Committee  
on Labor & Employment  
Relations

HOUSE BILL NO. 95

INTRODUCED BY MAGONE, SHELDEN, W. BAETH, CONROY,

KANDUCH, PALMER, ELLIS, HELMBRECHT, DUSSAULT, MCKITTRICK

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
87-105, 87-110 AND 87-148, R.C.M. 1947, TO COVER ALL PUBLIC  
EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAWS."

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

SECTION 1. SECTION 87-105, R.C.M. 1947, IS AMENDED TO  
READ AS FOLLOWS:

"87-105. Benefit eligibility conditions. An unemployed  
individual shall be eligible to receive benefits for any  
week of total unemployment within his benefit year; only if  
the commission division finds that--

(a) He has registered for work at and thereafter has  
continued to report at an employment office in accordance  
with such regulation as the commission division may  
prescribe, except that the commission division may, by  
regulation, prescribe that such types of cases or situations  
with respect to which it finds that compliance with such  
requirements would be oppressive, or would be inconsistent  
with the purposes of this act, provide for registration and  
reporting for work by mail or through other governmental  
agencies.

(b) He has made a claim for benefits in accordance  
with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and  
is seeking work, provided, however, that no claimant shall  
be considered ineligible in any week of unemployment for  
failure to comply with the provisions of this subsection if  
such failure is due to an illness or disability which occurs  
after he has registered for work and no suitable work has  
been offered to such claimant after the beginning of such  
illness or disability.

(d) Prior to any week for which he claims benefits he  
has been totally unemployed for a waiting period of one (1)  
week. However, if claimant's benefit year expires during a  
period of compensable unemployment, claimant will continue  
to receive weekly benefits, in a new benefit year, if  
otherwise eligible, without interruption to serve the  
waiting week for the new benefit year, but will thereafter  
be required to serve the waiting week before receiving  
benefits during subsequent unemployment in the new benefit  
year. No week shall be counted as a week of total  
unemployment for the purposes of this subsection:

- (1) If benefits have been paid with respect thereto;
- (2) Unless the individual was eligible for benefits  
with respect thereto;
- (3) Unless it occurs within the benefit year of the

1 claimant;

2 (4) Unless it occurs after benefits first could become  
3 payable to any individual under this act.

4 (e) An individual who received benefits during a  
5 benefit year must perform services for remuneration after  
6 the beginning of that year as a condition for receiving  
7 benefits in a second benefit year. The service may be in  
8 either covered or noncovered employment, however, the  
9 individual must have earned the lesser of three-thirteenths  
10 (3/13) of his high quarter of his second benefit year or six  
11 (6) times his weekly benefit amount of that same year.

12 (f) Benefits based on service in employment defined in  
13 section 87-148 (j) (6) and (7) and section 87-110 (d) shall  
14 be payable in the same amount, on the same terms and subject  
15 to the same conditions as compensation payable on the basis  
16 of other service subject to this act; except that benefits  
17 based on service in an instructional, research, or principal  
18 administrative capacity in a public school of the state of  
19 Montana, or in an institution of higher education (as  
20 defined in section 87-148 (n)) shall not be paid to an  
21 individual for any week of unemployment which begins during  
22 the period between two successive academic years, or during  
23 a similar period between two regular terms, whether or not  
24 successive, or during a period of paid sabbatical leave  
25 provided for in the individual's contract, if the individual

1 has a contract or contracts to perform services in any such  
2 capacity for any such public school, institution, or  
3 institutions of higher education for both such academic  
4 years or both such terms."

5 Section 2. Section 87-110, R.C.M. 1947, is amended to  
6 read as follows:

7 "87-110. Period, election and termination of  
8 employer's coverage. (a) Any employing unit which is or  
9 becomes an employer subject to this act within any calendar  
10 year, shall be subject to this act during the whole of such  
11 calendar year, except that this subsection shall not apply  
12 to an employing unit electing coverage as provided for in  
13 ~~subsections~~ subsection (c) ~~and (d)~~ of this section.

14 (b) Except as otherwise provided in subsection (c) ~~and~~  
15 ~~(d)~~ of this section an employing unit shall cease to be an  
16 employer subject to this act only as of the first day of  
17 January, of any calendar year, only if it files with the  
18 division prior to the last day of February, of such year, a  
19 written application for termination of coverage, and the  
20 division finds that the total wages payable for employment  
21 by said employer in the preceding calendar year did not  
22 exceed five hundred dollars (\$500). For the purpose of this  
23 subsection, the two (2) or more employing units mentioned in  
24 paragraph (2) or (3) of section 87-148 (i) shall be treated  
25 as a single employing unit.

1 (c) An employing unit not otherwise subject to this  
 2 act, or any employing unit for which services are performed  
 3 that do not constitute employment as defined in this act,  
 4 may file with the division, a written election that all such  
 5 services performed by individuals in its employ in one (1)  
 6 or more distinct establishments or places of business shall  
 7 be deemed to constitute employment for all purposes of this  
 8 act for not less than two (2) calendar years. Upon the  
 9 written approval of such election by the division, such  
 10 services shall be deemed to constitute employment subject to  
 11 this act from and after the date stated in such approval.  
 12 Such services shall cease to be deemed employment subject  
 13 hereto as of January 1, of any calendar year subsequent to  
 14 such two (2) calendar years only if at least thirty (30)  
 15 days prior to such first day of January such employing unit  
 16 has filed with the division a written notice to that  
 17 effect."

18 ~~(d) Any political subdivision of this state may elect~~  
 19 ~~to cover under this act service performed by employees in~~  
 20 ~~all the hospitals and institutions of higher education as~~  
 21 ~~defined in section 87-148 (n) and (o), operated by such~~  
 22 ~~political subdivision. The election may exclude any services~~  
 23 ~~described in section 87-148 (j) (7) (A). Election is to be~~  
 24 ~~made by filing with the division a written notice of such~~  
 25 ~~election. The effective date of the written election shall~~

1 ~~be any date after December 31, 1971, designated by the~~  
 2 ~~employing unit, provided that the date shall not be prior to~~  
 3 ~~January 1 of the calendar year in which the written election~~  
 4 ~~has been filed. Any political subdivision electing coverage~~  
 5 ~~under this subsection shall make payments in lieu of~~  
 6 ~~contributions with respect to benefits attributable to such~~  
 7 ~~employment as provided in section 87-109 (b) (4). An~~  
 8 ~~election under this section may be terminated, by filing~~  
 9 ~~with the division written notice not later than thirty (30)~~  
 10 ~~days preceding the last day of the calendar year in which~~  
 11 ~~the termination is to be effective. Such termination becomes~~  
 12 ~~effective as of the first day of the next ensuing calendar~~  
 13 ~~year with respect to services performed after that date.~~

14 Section 3. Section 87-148, R.C.M. 1947, is amended to  
 15 read as follows:

16 "87-148. Definitions. As used in this act, unless the  
 17 context clearly requires otherwise:

18 (a) "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 (b) "Benefits" means the money payments payable to an  
 22 individual, as provided in this act, with respect to his  
 23 unemployment.

24 (c) "Base period" means the first four (4) of the last  
 25 five (5) completed calendar quarters immediately preceding

1 the first day of an individual's benefit year provided,  
 2 however, that in the case of a combined-wage claim pursuant  
 3 to the arrangement approved by the secretary of labor of the  
 4 United States, the base period shall be that applicable  
 5 under the unemployment law of the paying state.

6 (d) "Benefit year" with respect to any individual  
 7 means, the fifty-two (52) consecutive-week period beginning  
 8 with the first day of the calendar week in which such  
 9 individual files a valid claim, and thereafter the fifty-two  
 10 (52) consecutive-week period beginning with the first day of  
 11 the calendar week in which such individual files his next  
 12 valid claim after the termination of his last preceding  
 13 benefit year, provided that if such filing shall result in  
 14 an overlapping of benefit years the new benefit year shall  
 15 begin upon the first Sunday following the expiration of his  
 16 last preceding benefit year provided, however, that in the  
 17 case of a combined-wage claim pursuant to the arrangement  
 18 approved by the secretary of labor of the United States, the  
 19 base period shall be that applicable under the unemployment  
 20 law of the paying state.

21 (e) "Calendar quarter" means the period of three (3)  
 22 consecutive calendar months ending on March 31, June 30,  
 23 September 30, or December 31.

24 (f) "Division" means the employment security division  
 25 of the department of labor and industry provided for in

1 Title 82A, chapter 10, R.C.M. 1947.

2 (g) "Contributions" means the money payments to the  
 3 state unemployment compensation fund required by this act.

4 (h) "Employing unit" means any individual or type of  
 5 organization, including the state government, any of its  
 6 political subdivisions or instrumentalities, any  
 7 partnership, association, trust, estate, joint-stock  
 8 company, insurance company or corporation, whether domestic  
 9 or foreign, or the receiver, trustee in bankruptcy, trustee  
 10 or successor thereof, or the legal representative of a  
 11 deceased person, which has or subsequent to January 1, 1936,  
 12 had in its employ one (1) or more individuals performing  
 13 services for it within this state; and all individuals  
 14 performing services within this state for any employing unit  
 15 which maintains two (2) or more separate establishments  
 16 within this state shall be deemed to be employed by a single  
 17 employing unit for all the purposes of this act. Each  
 18 individual employed to perform or assist in performing the  
 19 work of any agent or employee of an employing unit shall be  
 20 deemed to be employed by such employing unit for the  
 21 purposes of this act, whether such individual was hired or  
 22 paid directly by such employing unit or by such agent or  
 23 employee, provided the employing unit has actual or  
 24 constructive knowledge of the work.

25 (i) "Employer" means:

1 (1) Any employing unit whose total annual payroll  
2 within either the current or preceding calendar year,  
3 exceeds the sum of five hundred dollars (\$500);

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

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

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

25 (5) Any employing unit which, having become an

1 employer under paragraph (1), (2), or (3), or (4), has not,  
2 under section 87-110, ceased to be an employer subject to  
3 this act; or

4 (6) For the effective period of its election pursuant  
5 to section 87-110 (c) and (d) any other employing unit which  
6 has elected to become fully subject to this act.

7 (j) (1) "Employment" subject to other provisions of  
8 this subsection means service by an individual or by an  
9 officer of a corporation, including service in interstate  
10 commerce, performed for wages or under any contract of hire,  
11 written or oral, express or implied.

12 (2) The term "employment" shall include an  
13 individual's entire service, performed within or both within  
14 and without this state if:

15 (A) The service is localized in this state; or

16 (B) The service is not localized in any state but some  
17 of the service is performed in this state and (I) the base  
18 of operations, or, if there is no base of operations, then  
19 the place from which such service is directed or controlled,  
20 is in this state; or (II) the base of operations or place  
21 from which such service is directed or controlled is not in  
22 any state in which some part of the service is performed,  
23 but the individual's residence is in this state.

24 (3) Service not covered under paragraph (2) of this  
25 subsection, and performed entirely without this state with

1 respect to no part of which contributions are required and  
 2 paid under an unemployment compensation law of any other  
 3 state or of the federal government, shall be deemed to be  
 4 employment subject to this act if the individual performing  
 5 such services is a resident of this state and the division  
 6 approves the election of the employing unit for whom such  
 7 services are performed that the entire service of such  
 8 individual shall be deemed to be employment subject to this  
 9 act.

10 (4) Service shall be deemed to be localized within a  
 11 state if--

12 (A) The service is performed entirely within such  
 13 state; or

14 (B) The service is performed both within and without  
 15 such state, but the service performed without such state is  
 16 incidental to the individual's service within the state, for  
 17 example, is temporary or transitory in nature or consists of  
 18 isolated transactions.

19 (5) Services performed by an individual for wages shall  
 20 be deemed to be employment subject to this act unless and  
 21 until it is shown to the satisfaction of the division that:

22 (A) Such individual has been and will continue to be  
 23 free from control or direction over the performance of such  
 24 services, both under his contract and in fact; and

25 (B) Such service is either outside the usual course of

1 the business for which such service is performed, or that  
 2 such service is performed outside of all the places of  
 3 business of the enterprise for which such service is  
 4 performed; and

5 (C) Such individual is customarily engaged in an  
 6 independently established trade, occupation, profession or  
 7 business.

8 (6) The term "employment" shall include service  
 9 performed after December 31, 1971, by an individual in the  
 10 employ of this state or any of its instrumentalities (or in  
 11 the employ of this state and one (1) or more other states or  
 12 their instrumentalities) for a hospital or institution of  
 13 higher education located in this state. Effective after  
 14 ~~December 31, 1974~~ JULY 1, 1975, the term "employment" shall  
 15 include service performed by all individuals in the employ  
 16 of this state, ~~or any of the political subdivisions thereof,~~  
 17 ~~or of any of its instrumentalities (or in the employ of this~~  
 18 ~~state, or any of the political subdivisions thereof,~~ OTHER  
 19 THAN ELECTED PUBLIC OFFICIALS, WHO WORK FOR THE STATE OF  
 20 MONTANA, ITS UNIVERSITY, ANY OF ITS COLLEGES, PUBLIC  
 21 SCHOOLS, COMPONENTS OR UNITS THEREOF, OR ANY LOCAL  
 22 GOVERNMENT UNIT, and one (1) or more other states or their  
 23 instrumentalities or political subdivisions} WHOSE SERVICES  
 24 ARE COMPENSATED BY SALARY OR WAGES.

25 (7) The term "employment" shall include service

1 performed after December 31, 1971, by an individual in the  
 2 employ of a religious, charitable, scientific, literary, or  
 3 educational organization.

4 (A) For the purposes of paragraph (7) of this  
 5 subsection the term "employment" does not apply to service  
 6 performed:

7 (1) In the employ of a church or convention or  
 8 association of churches, or an organization which is  
 9 operated primarily for religious purposes and which is  
 10 operated, supervised, controlled, or principally supported  
 11 by a church or convention or association of churches; or

12 (2) By a duly ordained, commissioned, or licensed  
 13 minister of a church in the exercise of his ministry or by a  
 14 member of a religious order in the exercise of duties  
 15 required by such order; or

16 (3) In the employ of a school which is not an  
 17 institution of higher education; or

18 (4) In a facility conducted for the purpose of  
 19 carrying out a program of rehabilitation for individuals  
 20 whose earning capacity is impaired by age or physical or  
 21 mental deficiency or injury or providing remunerative work  
 22 for individuals who because of their impaired physical or  
 23 mental capacity cannot be readily absorbed in the  
 24 competitive labor market by an individual receiving such  
 25 rehabilitation or remunerative work; or

1 (5) Services performed as part of an unemployment  
 2 work-relief or work-training program assisted or financed in  
 3 whole or in part by any federal agency or any agency of a  
 4 state or political subdivision thereof, by an individual  
 5 receiving such work relief or work training; or

6 (6) Services performed for a hospital in a state  
 7 prison or other state correctional institution by an inmate  
 8 of the prison or correctional institution.

9 (8) The term "employment" shall include the service of  
 10 an individual who is a citizen of the United States,  
 11 performed outside the United States (except in Canada or the  
 12 Virgin Islands), after December 31, 1971, in the employ of  
 13 an American employer (other than service which is deemed  
 14 "employment" under the provisions of subparagraphs (2) or  
 15 (4) of this subsection or the parallel provisions of another  
 16 state's law), if:

17 (A) The employer's principal place of business in the  
 18 United States is located in this state; or

19 (B) The employer has no place of business in the  
 20 United States, but

21 (1) The employer is an individual who is a resident  
 22 of this state; or

23 (2) The employer is a corporation which is  
 24 organized under the laws of this state; or

25 (3) The employer is a partnership or a trust and

1 the number of the partners or trustees who are residents of  
 2 this state is greater than the number who are residents of  
 3 any other state; or

4 (C) None of the criteria of divisions (A) and (B) of  
 5 this subparagraph is met but the employer has elected  
 6 coverage in this state or, the employer having failed to  
 7 elect coverage in any state, the individual has filed a  
 8 claim for benefits, based on such service, under the law of  
 9 this state.

10 (D) An "American employer," for purposes of this  
 11 paragraph, means a person who is:

12 (1) An individual who is a resident of the United  
 13 States; or

14 (2) A partnership if two-thirds (2/3) or more of  
 15 the partners are residents of the United States; or

16 (3) A trust, if all of the trustees are residents  
 17 of the United States; or

18 (4) A corporation organized under the laws of the  
 19 United States or of any state.

20 (9) The term "employment" shall not include:

21 (A) Agricultural labor; the term "agricultural labor"  
 22 includes all services performed prior to January 1, 1972,  
 23 which was agricultural labor as defined in this subparagraph  
 24 prior to such date, and remunerated services performed after  
 25 December 31, 1971:

1 (1) On a farm, in the employ of any person in  
 2 connection with cultivating the soil, or in connection with  
 3 raising or harvesting any agricultural or horticultural  
 4 commodity, including the raising, shearing, feeding, caring  
 5 for, training, and management of livestock, bees, poultry  
 6 and fur-bearing animals and wildlife.

7 (2) In the employ of the owner or tenant or other  
 8 operator of a farm, in connection with the operation,  
 9 management, conservation, improvement, or maintenance of  
 10 such farm and its tools and equipment, or in salvaging  
 11 timber or clearing land of brush and other debris left by a  
 12 hurricane, if the major part of such service is performed on  
 13 a farm.

14 (3) In connection with the production or harvesting  
 15 of any commodity commonly known as agricultural commodities,  
 16 or in connection with the hatching of poultry, or in  
 17 connection with the operation or maintenance of ditches,  
 18 canals, reservoirs, or waterways used exclusively for  
 19 supplying and storing water for farming purposes.

20 (4) In the employ of the operator of a farm or a  
 21 group of operators of farms (or a co-operative organization  
 22 of which such operators are members) in handling, planting,  
 23 drying, packing, packaging, processing, freezing, grading,  
 24 storing, or delivering to storage or to market or to a  
 25 carrier for transportation to market, in its unmanufactured



1 state, any agricultural or horticultural commodity; but only  
 2 if such operator or operators produced more than one-half  
 3 (1/2) of the commodity with respect to which such service is  
 4 performed.

5 (5) The provisions of paragraphs (1), (2), (3), and  
 6 (4) shall not be deemed to be applicable with respect to  
 7 service performed in connection with commercial canning or  
 8 commercial freezing or in connection with any agricultural  
 9 or horticultural commodity after its delivery to a terminal  
 10 market for distribution for consumption; or on a farm  
 11 operated for profit if such service is not in the course of  
 12 the employer's trade or business or is domestic service in a  
 13 private home of the employer.

14 (6) As used in this section, the term "farm"  
 15 includes stock, dairy, poultry, fruit, fur-bearing animals,  
 16 and truck farms, plantations, ranches, nurseries, ranges,  
 17 greenhouses or other similar structures used primarily for  
 18 the raising of agricultural or horticultural commodities and  
 19 orchards.

20 (B) Domestic service in a private home, local college  
 21 club or local chapter of a college fraternity or sorority;

22 (C) Service performed as an officer or member of the  
 23 crew of a vessel on the navigable waters of the United  
 24 States;

25 (D) Service performed by an individual in the employ

1 of his son, daughter, or spouse, and service performed by a  
 2 child under the age of ~~twenty-one (21)~~ EIGHTEEN (18) in the  
 3 employ of his father or mother;

4 ~~(E) Service performed in the employ of this state,~~  
 5 ~~except as provided in subsection (j) (6) of this section, or~~  
 6 ~~of any political subdivision thereof, which has not elected~~  
 7 ~~coverage pursuant to section 87-110 (d);~~

8 ~~(F)~~ (E) Service performed in the employ of any other  
 9 state or its political subdivisions, or of the United States  
 10 government, or of an instrumentality of any other state or  
 11 states or their political subdivisions or of the United  
 12 States, except that national banks organized under the  
 13 national banking law shall not be entitled to exemption  
 14 under this section and shall be subject to this act the same  
 15 as state banks;

16 ~~(G)~~ (F) Service with respect to which unemployment  
 17 compensation is payable under an unemployment compensation  
 18 system established by an act of Congress; provided, that the  
 19 division is hereby authorized and directed to enter into  
 20 agreements with the proper agencies under such act of  
 21 Congress, which agreements shall become effective ten (10)  
 22 days after publication thereof in the manner in section  
 23 87-121 for general rules, to provide reciprocal treatment to  
 24 individuals who have, after acquiring potential rights to  
 25 benefits under this act, acquired rights to unemployment

1 compensation under such act of Congress, or who have, after  
 2 acquiring potential rights to unemployment compensation  
 3 under such act of Congress, acquired rights to benefits  
 4 under this act;

5 ~~(H)~~--(G) Services performed in the delivery and  
 6 distribution of newspapers or shopping news from house to  
 7 house and business establishments by an individual under the  
 8 age of eighteen (18) years, but not including the delivery  
 9 or distribution to any point or points for subsequent  
 10 delivery or distribution.

11 ~~(I)~~--(H) Services performed by real estate, securities  
 12 and insurance salesmen paid solely by commissions and  
 13 without guarantee of minimum earnings.

14 ~~(J)~~--(I) Service performed, in the employ of a school,  
 15 college, or university, if such service is performed by a  
 16 student who is enrolled and is regularly attending classes  
 17 at such school, college or university, or by the spouse of  
 18 such a student, if such spouse is advised, at the time such  
 19 spouse commences to perform such service, that the  
 20 employment of such spouse to perform such service is  
 21 provided under a program to provide financial assistance to  
 22 such student by such school, college, or university, and  
 23 such employment will not be covered by any program of  
 24 unemployment insurance.

25 ~~(K)~~--(J) Service performed by an individual under the

1 age of twenty-two (22) who is enrolled at a nonprofit or  
 2 public educational institution which normally maintains a  
 3 regular faculty and curriculum and normally has a regularly  
 4 organized body of students in attendance at the place where  
 5 its educational activities are carried on as a student in a  
 6 full-time program, taken for credit at such institution,  
 7 which combines academic instruction with work experience, if  
 8 such service is an integral part of such program, and such  
 9 institution has so certified to the employer, except that  
 10 this subparagraph shall not apply to service performed in a  
 11 program established for or on behalf of an employer or group  
 12 of employers.

13 ~~(L)~~--(K) Service performed in the employ of a  
 14 hospital, if such service is performed by a patient of the  
 15 hospital.

16 (k) "Employment office" means a free public employment  
 17 office, or branch thereof, operated by this state or  
 18 maintained as a part of a state-controlled system of public  
 19 employment offices, or such other free public employment  
 20 offices operated and maintained by the United States  
 21 government or its instrumentalities, as the division may  
 22 approve.

23 (l) "Fund" means the unemployment compensation fund  
 24 established by this act, to which all contributions and  
 25 payments in lieu of contributions are required and from

1 which all benefits provided under this act shall be paid.

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

5 (n) "Institution of higher education" for the purposes  
6 of this section, means an education institution which:

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

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

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

18 (4) is a public or other nonprofit institution.

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

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

1 (p) "Board" means the board of labor appeals, provided  
2 for in Title 82A, chapter 10."

-End-

1 HOUSE BILL NO. 95

2 INTRODUCED BY MAGONE, SHELDEN, W. BAETH, CONROY,

3 KANDUCH, PALMER, ELLIS, HELMBRECHT, DUSSAULT, MCKITTRICK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
6 87-105, 87-110 AND 87-148, R.C.M. 1947, TO COVER ALL PUBLIC  
7 EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAWS."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 SECTION 1. SECTION 87-105, R.C.M. 1947, IS AMENDED TO  
11 READ AS FOLLOWS:

12 "87-105. Benefit eligibility conditions. An unemployed  
13 individual shall be eligible to receive benefits for any  
14 week of total unemployment within his benefit year; only if  
15 the commission division finds that--

16 (a) He has registered for work at and thereafter has  
17 continued to report at an employment office in accordance  
18 with such regulation as the commission division may  
19 prescribe, except that the commission division may, by  
20 regulation, prescribe that such types of cases or situations  
21 with respect to which it finds that compliance with such  
22 requirements would be oppressive, or would be inconsistent  
23 with the purposes of this act, provide for registration and  
24 reporting for work by mail or through other ~~govern~~mental  
25 agencies.

1 (b) He has made a claim for benefits in accordance  
2 with the provisions of section 87-107 (a).

3 (c) He is able to work and is available for work and  
4 is seeking work, provided, however, that no claimant shall  
5 be considered ineligible in any week of unemployment for  
6 failure to comply with the provisions of this subsection if  
7 such failure is due to an illness or disability which occurs  
8 after he has registered for work and no suitable work has  
9 been offered to such claimant after the beginning of such  
10 illness or disability.

11 (d) Prior to any week for which he claims benefits he  
12 has been totally unemployed for a waiting period of one (1)  
13 week. However, if claimant's benefit year expires during a  
14 period of compensable unemployment, claimant will continue  
15 to receive weekly benefits, in a new benefit year, if  
16 otherwise eligible, without interruption to serve the  
17 waiting week for the new benefit year, but will thereafter  
18 be required to serve the waiting week before receiving  
19 benefits during subsequent unemployment in the new benefit  
20 year. No week shall be counted as a week of total  
21 unemployment for the purposes of this subsection:

22 (1) If benefits have been paid with respect thereto;

23 (2) Unless the individual was eligible for benefits  
24 with respect thereto;

25 (3) Unless it occurs within the benefit year of the

1 claimant;

2 (4) Unless it occurs after benefits first could become  
3 payable to any individual under this act.

4 (e) An individual who received benefits during a  
5 benefit year must perform services for remuneration after  
6 the beginning of that year as a condition for receiving  
7 benefits in a second benefit year. The service may be in  
8 either covered or noncovered employment, however, the  
9 individual must have earned the lesser of three-thirteenths  
10 (3/13) of his high quarter of his second benefit year or six  
11 (6) times his weekly benefit amount of that same year.

12 (f) Benefits based on service in employment defined in  
13 section 87-148 (j) (6) and (7) and section 87-110 (d) shall  
14 be payable in the same amount, on the same terms and subject  
15 to the same conditions as compensation payable on the basis  
16 of other service subject to this act; except that benefits  
17 based on service in an instructional, research, or principal  
18 administrative capacity in a public school of the state of  
19 Montana, or in an institution of higher education (as  
20 defined in section 87-148 (n)) shall not be paid to an  
21 individual for any week of unemployment which begins during  
22 the period between two successive academic years, or during  
23 a similar period between two regular terms, whether or not  
24 successive, or during a period of paid sabbatical leave  
25 provided for in the individual's contract, if the individual

1 has a contract or contracts to perform services in any such  
2 capacity for any such public school, institution, or  
3 institutions of higher education for both such academic  
4 years or both such terms."

5 Section 2. Section 87-110, R.C.M. 1947, is amended to  
6 read as follows:

7 \*87-110. Period, election and termination of  
8 employer's coverage. (a) Any employing unit which is or  
9 becomes an employer subject to this act within any calendar  
10 year, shall be subject to this act during the whole of such  
11 calendar year, except that this subsection shall not apply  
12 to an employing unit electing coverage as provided for in  
13 ~~subsections~~ subsection (c) ~~and-(d)~~ of this section.

14 (b) Except as otherwise provided in subsection (c) ~~and~~  
15 ~~(d)~~ of this section an employing unit shall cease to be an  
16 employer subject to this act only as of the first day of  
17 January, of any calendar year, only if it files with the  
18 division prior to the last day of February, of such year, a  
19 written application for termination of coverage, and the  
20 division finds that the total wages payable for employment  
21 by said employer in the preceding calendar year did not  
22 exceed five hundred dollars (\$500). For the purpose of this  
23 subsection, the two (2) or more employing units mentioned in  
24 paragraph (2) or (3) of section 87-148 (i) shall be treated  
25 as a single employing unit.

1 (c) An employing unit not otherwise subject to this  
 2 act, or any employing unit for which services are performed  
 3 that do not constitute employment as defined in this act,  
 4 may file with the division, a written election that all such  
 5 services performed by individuals in its employ in one (1)  
 6 or more distinct establishments or places of business shall  
 7 be deemed to constitute employment for all purposes of this  
 8 act for not less than two (2) calendar years. Upon the  
 9 written approval of such election by the division, such  
 10 services shall be deemed to constitute employment subject to  
 11 this act from and after the date stated in such approval.  
 12 Such services shall cease to be deemed employment subject  
 13 hereto as of January 1, of any calendar year subsequent to  
 14 such two (2) calendar years only if at least thirty (30)  
 15 days prior to such first day of January such employing unit  
 16 has filed with the division a written notice to that  
 17 effect."

18 ~~(d) Any political subdivision of this state may elect~~  
 19 ~~to cover under this act service performed by employees in~~  
 20 ~~all the hospitals and institutions of higher education as~~  
 21 ~~defined in section 87-148 (a) and (c), operated by such~~  
 22 ~~political subdivision. The election may exclude any services~~  
 23 ~~described in section 87-148 (j) (7) (A). Election is to be~~  
 24 ~~made by filing with the division a written notice of such~~  
 25 ~~election. The effective date of the written election shall~~

1 ~~be any date after December 31, 1971, designated by the~~  
 2 ~~employing unit, provided that the date shall not be prior to~~  
 3 ~~January 1 of the calendar year in which the written election~~  
 4 ~~has been filed. Any political subdivision electing coverage~~  
 5 ~~under this subsection shall make payments in lieu of~~  
 6 ~~contributions with respect to benefits attributable to such~~  
 7 ~~employment as provided in section 87-189 (b) (4). An~~  
 8 ~~election under this section may be terminated, by filing~~  
 9 ~~with the division written notice not later than thirty (30)~~  
 10 ~~days preceding the last day of the calendar year in which~~  
 11 ~~the termination is to be effective. Such termination becomes~~  
 12 ~~effective as of the first day of the next ensuing calendar~~  
 13 ~~year with respect to services performed after that date.~~

14 Section 3. Section 87-148, R.C.M. 1947, is amended to  
 15 read as follows:

16 "87-148. Definitions. As used in this act, unless the  
 17 context clearly requires otherwise:

18 (a) "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 (b) "Benefits" means the money payments payable to an  
 22 individual, as provided in this act, with respect to his  
 23 unemployment.

24 (c) "Base period" means the first four (4) of the last  
 25 five (5) completed calendar quarters immediately preceding

1 the first day of an individual's benefit year provided,  
 2 however, that in the case of a combined-wage claim pursuant  
 3 to the arrangement approved by the secretary of labor of the  
 4 United States, the base period shall be that applicable  
 5 under the unemployment law of the paying state.

6 (d) "Benefit year" with respect to any individual  
 7 means, the fifty-two (52) consecutive-week period beginning  
 8 with the first day of the calendar week in which such  
 9 individual files a valid claim, and thereafter the fifty-two  
 10 (52) consecutive-week period beginning with the first day of  
 11 the calendar week in which such individual files his next  
 12 valid claim after the termination of his last preceding  
 13 benefit year, provided that if such filing shall result in  
 14 an overlapping of benefit years the new benefit year shall  
 15 begin upon the first Sunday following the expiration of his  
 16 last preceding benefit year provided, however, that in the  
 17 case of a combined-wage claim pursuant to the arrangement  
 18 approved by the secretary of labor of the United States, the  
 19 base period shall be that applicable under the unemployment  
 20 law of the paying state.

21 (e) "Calendar quarter" means the period of three (3)  
 22 consecutive calendar months ending on March 31, June 30,  
 23 September 30, or December 31.

24 (f) "Division" means the employment security division  
 25 of the department of labor and industry provided for in

1 Title 82A, chapter 10, R.C.M. 1947.

2 (g) "Contributions" means the money payments to the  
 3 state unemployment compensation fund required by this act.

4 (h) "Employing unit" means any individual or type of  
 5 organization, including the state government, any of its  
 6 political subdivisions or instrumentalities, any  
 7 partnership, association, trust, estate, joint-stock  
 8 company, insurance company or corporation, whether domestic  
 9 or foreign, or the receiver, trustee in bankruptcy, trustee  
 10 or successor thereof, or the legal representative of a  
 11 deceased person, which has or subsequent to January 1, 1936,  
 12 had in its employ one (1) or more individuals performing  
 13 services for it within this state; and all individuals  
 14 performing services within this state for any employing unit  
 15 which maintains two (2) or more separate establishments  
 16 within this state shall be deemed to be employed by a single  
 17 employing unit for all the purposes of this act. Each  
 18 individual employed to perform or assist in performing the  
 19 work of any agent or employee of an employing unit shall be  
 20 deemed to be employed by such employing unit for the  
 21 purposes of this act, whether such individual was hired or  
 22 paid directly by such employing unit or by such agent or  
 23 employee, provided the employing unit has actual or  
 24 constructive knowledge of the work.

25 (i) "Employer" means:

1 (1) Any employing unit whose total annual payroll  
2 within either the current or preceding calendar year,  
3 exceeds the sum of five hundred dollars (\$500);

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

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

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

25 (5) Any employing unit which, having become an

1 employer under paragraph (1), (2), or (3), or (4), has not,  
2 under section 87-110, ceased to be an employer subject to  
3 this act; or

4 (6) For the effective period of its election pursuant  
5 to section 87-110 (c) and (d) any other employing unit which  
6 has elected to become fully subject to this act.

7 (j) (1) "Employment" subject to other provisions of  
8 this subsection means service by an individual or by an  
9 officer of a corporation, including service in interstate  
10 commerce, performed for wages or under any contract of hire,  
11 written or oral, express or implied.

12 (2) The term "employment" shall include an  
13 individual's entire service, performed within or both within  
14 and without this state if:

15 (A) The service is localized in this state; or

16 (B) The service is not localized in any state but some  
17 of the service is performed in this state and (I) the base  
18 of operations, or, if there is no base of operations, then  
19 the place from which such service is directed or controlled,  
20 is in this state; or (II) the base of operations or place  
21 from which such service is directed or controlled is not in  
22 any state in which some part of the service is performed,  
23 but the individual's residence is in this state.

24 (3) Service not covered under paragraph (2) of this  
25 subsection, and performed entirely without this state with



1 respect to no part of which contributions are required and  
 2 paid under an unemployment compensation law of any other  
 3 state or of the federal government, shall be deemed to be  
 4 employment subject to this act if the individual performing  
 5 such services is a resident of this state and the division  
 6 approves the election of the employing unit for whom such  
 7 services are performed that the entire service of such  
 8 individual shall be deemed to be employment subject to this  
 9 act.

10 (4) Service shall be deemed to be localized within a  
 11 state if--

12 (A) The service is performed entirely within such  
 13 state; or

14 (B) The service is performed both within and without  
 15 such state, but the service performed without such state is  
 16 incidental to the individual's service within the state, for  
 17 example, is temporary or transitory in nature or consists of  
 18 isolated transactions.

19 (5) Services performed by an individual for wages shall  
 20 be deemed to be employment subject to this act unless and  
 21 until it is shown to the satisfaction of the division that:

22 (A) Such individual has been and will continue to be  
 23 free from control or direction over the performance of such  
 24 services, both under his contract and in fact; and

25 (B) Such service is either outside the usual course of

1 the business for which such service is performed, or that  
 2 such service is performed outside of all the places of  
 3 business of the enterprise for which such service is  
 4 performed; and

5 (C) Such individual is customarily engaged in an  
 6 independently established trade, occupation, profession or  
 7 business.

8 (6) The term "employment" shall include service  
 9 performed after December 31, 1971, by an individual in the  
 10 employ of this state or any of its instrumentalities (or in  
 11 the employ of this state and one (1) or more other states or  
 12 their instrumentalities) for a hospital or institution of  
 13 higher education located in this state. Effective after  
 14 ~~December 31, 1974~~ JULY 1, 1975, the term "employment" shall  
 15 include service performed by all individuals in the employ  
 16 of this state, ~~or any of the political subdivisions thereof,~~  
 17 ~~or of any of its instrumentalities (or in the employ of this~~  
 18 ~~state, or any of the political subdivisions thereof,~~ OTHER  
 19 THAN ELECTED PUBLIC OFFICIALS, WHO WORK FOR THE STATE OF  
 20 MONTANA, ITS UNIVERSITY, ANY OF ITS COLLEGES, PUBLIC  
 21 SCHOOLS, COMPONENTS OR UNITS THEREOF, OR ANY LOCAL  
 22 GOVERNMENT UNIT, and one (1) or more other states or their  
 23 instrumentalities or political subdivisions WHOSE SERVICES  
 24 ARE COMPENSATED BY SALARY OR WAGES.

25 (7) The term "employment" shall include service

1 performed after December 31, 1971, by an individual in the  
2 employ of a religious, charitable, scientific, literary, or  
3 educational organization.

4 (A) For the purposes of paragraph (7) of this  
5 subsection the term "employment" does not apply to service  
6 performed:

7 (1) In the employ of a church or convention or  
8 association of churches, or an organization which is  
9 operated primarily for religious purposes and which is  
10 operated, supervised, controlled, or principally supported  
11 by a church or convention or association of churches; or

12 (2) By a duly ordained, commissioned, or licensed  
13 minister of a church in the exercise of his ministry or by a  
14 member of a religious order in the exercise of duties  
15 required by such order; or

16 (3) In the employ of a school which is not an  
17 institution of higher education; or

18 (4) In a facility conducted for the purpose of  
19 carrying out a program of rehabilitation for individuals  
20 whose earning capacity is impaired by age or physical or  
21 mental deficiency or injury or providing remunerative work  
22 for individuals who because of their impaired physical or  
23 mental capacity cannot be readily absorbed in the  
24 competitive labor market by an individual receiving such  
25 rehabilitation or remunerative work; or

1 (5) Services performed as part of an unemployment  
2 work-relief or work-training program assisted or financed in  
3 whole or in part by any federal agency or any agency of a  
4 state or political subdivision thereof, by an individual  
5 receiving such work relief or work training; or

6 (6) Services performed for a hospital in a state  
7 prison or other state correctional institution by an inmate  
8 of the prison or correctional institution.

9 (8) The term "employment" shall include the service of  
10 an individual who is a citizen of the United States,  
11 performed outside the United States (except in Canada or the  
12 Virgin Islands), after December 31, 1971, in the employ of  
13 an American employer (other than service which is deemed  
14 "employment" under the provisions of subparagraphs (2) or  
15 (4) of this subsection or the parallel provisions of another  
16 state's law), if:

17 (A) The employer's principal place of business in the  
18 United States is located in this state; or

19 (B) The employer has no place of business in the  
20 United States, but

21 (1) The employer is an individual who is a resident  
22 of this state; or

23 (2) The employer is a corporation which is  
24 organized under the laws of this state; or

25 (3) The employer is a partnership or a trust and

1 the number of the partners or trustees who are residents of  
2 this state is greater than the number who are residents of  
3 any other state; or

4 (C) None of the criteria of divisions (A) and (B) of  
5 this subparagraph is met but the employer has elected  
6 coverage in this state or, the employer having failed to  
7 elect coverage in any state, the individual has filed a  
8 claim for benefits, based on such service, under the law of  
9 this state.

10 (D) An "American employer," for purposes of this  
11 paragraph, means a person who is:

12 (1) An individual who is a resident of the United  
13 States; or

14 (2) A partnership if two-thirds (2/3) or more of  
15 the partners are residents of the United States; or

16 (3) A trust, if all of the trustees are residents  
17 of the United States; or

18 (4) A corporation organized under the laws of the  
19 United States or of any state.

20 (9) The term "employment" shall not include:

21 (A) Agricultural labor; the term "agricultural labor"  
22 includes all services performed prior to January 1, 1972,  
23 which was agricultural labor as defined in this subparagraph  
24 prior to such date, and remunerated services performed after  
25 December 31, 1971:

1 (1) On a farm, in the employ of any person in  
2 connection with cultivating the soil, or in connection with  
3 raising or harvesting any agricultural or horticultural  
4 commodity, including the raising, shearing, feeding, caring  
5 for, training, and management of livestock, bees, poultry  
6 and fur-bearing animals and wildlife.

7 (2) In the employ of the owner or tenant or other  
8 operator of a farm, in connection with the operation,  
9 management, conservation, improvement, or maintenance of  
10 such farm and its tools and equipment, or in salvaging  
11 timber or clearing land of brush and other debris left by a  
12 hurricane, if the major part of such service is performed on  
13 a farm.

14 (3) In connection with the production or harvesting  
15 of any commodity commonly known as agricultural commodities,  
16 or in connection with the hatching of poultry, or in  
17 connection with the operation or maintenance of ditches,  
18 canals, reservoirs, or waterways used exclusively for  
19 supplying and storing water for farming purposes.

20 (4) In the employ of the operator of a farm or a  
21 group of operators of farms (or a co-operative organization  
22 of which such operators are members) in handling, planting,  
23 drying, packing, packaging, processing, freezing, grading,  
24 storing, or delivering to storage or to market or to a  
25 carrier for transportation to market, in its unmanufactured

1 state, any agricultural or horticultural commodity; but only  
2 if such operator or operators produced more than one-half  
3 (1/2) of the commodity with respect to which such service is  
4 performed.

5 (5) The provisions of paragraphs (1), (2), (3), and  
6 (4) shall not be deemed to be applicable with respect to  
7 service performed in connection with commercial canning or  
8 commercial freezing or in connection with any agricultural  
9 or horticultural commodity after its delivery to a terminal  
10 market for distribution for consumption; or on a farm  
11 operated for profit if such service is not in the course of  
12 the employer's trade or business or is domestic service in a  
13 private home of the employer.

14 (6) As used in this section, the term "farm"  
15 includes stock, dairy, poultry, fruit, fur-bearing animals,  
16 and truck farms, plantations, ranches, nurseries, ranges,  
17 greenhouses or other similar structures used primarily for  
18 the raising of agricultural or horticultural commodities and  
19 orchards.

20 (B) Domestic service in a private home, local college  
21 club or local chapter of a college fraternity or sorority;

22 (C) Service performed as an officer or member of the  
23 crew of a vessel on the navigable waters of the United  
24 States;

25 (D) Service performed by an individual in the employ

1 of his son, daughter, or spouse, and service performed by a  
2 child under the age of ~~twenty-one (21)~~ EIGHTEEN (18) in the  
3 employ of his father or mother;

4 ~~(B) Service performed in the employ of this state,~~  
5 ~~except as provided in subsection (j) (6) of this section, or~~  
6 ~~of any political subdivision thereof, which has not elected~~  
7 ~~coverage pursuant to section 87-110 (d);~~

8 ~~(F)~~ (E) Service performed in the employ of any other  
9 state or its political subdivisions, or of the United States  
10 government, or of an instrumentality of any other state or  
11 states or their political subdivisions or of the United  
12 States, except that national banks organized under the  
13 national banking law shall not be entitled to exemption  
14 under this section and shall be subject to this act the same  
15 as state banks;

16 ~~(G)~~ (F) Service with respect to which unemployment  
17 compensation is payable under an unemployment compensation  
18 system established by an act of Congress; provided, that the  
19 division is hereby authorized and directed to enter into  
20 agreements with the proper agencies under such act of  
21 Congress, which agreements shall become effective ten (10)  
22 days after publication thereof in the manner in section  
23 87-121 for general rules, to provide reciprocal treatment to  
24 individuals who have, after acquiring potential rights to  
25 benefits under this act, acquired rights to unemployment

1 compensation under such act of Congress, or who have, after  
 2 acquiring potential rights to unemployment compensation  
 3 under such act of Congress, acquired rights to benefits  
 4 under this act;

5 ~~(H)~~--(G) Services performed in the delivery and  
 6 distribution of newspapers or shopping news from house to  
 7 house and business establishments by an individual under the  
 8 age of eighteen (18) years, but not including the delivery  
 9 or distribution to any point or points for subsequent  
 10 delivery or distribution.

11 ~~(I)~~--(H) Services performed by real estate, securities  
 12 and insurance salesmen paid solely by commissions and  
 13 without guarantee of minimum earnings.

14 ~~(J)~~--(I) Service performed, in the employ of a school,  
 15 college, or university, if such service is performed by a  
 16 student who is enrolled and is regularly attending classes  
 17 at such school, college or university, or by the spouse of  
 18 such a student, if such spouse is advised, at the time such  
 19 spouse commences to perform such service, that the  
 20 employment of such spouse to perform such service is  
 21 provided under a program to provide financial assistance to  
 22 such student by such school, college, or university, and  
 23 such employment will not be covered by any program of  
 24 unemployment insurance.

25 ~~(K)~~--(J) Service performed by an individual under the

1 age of twenty-two (22) who is enrolled at a nonprofit or  
 2 public educational institution which normally maintains a  
 3 regular faculty and curriculum and normally has a regularly  
 4 organized body of students in attendance at the place where  
 5 its educational activities are carried on as a student in a  
 6 full-time program, taken for credit at such institution,  
 7 which combines academic instruction with work experience, if  
 8 such service is an integral part of such program, and such  
 9 institution has so certified to the employer, except that  
 10 this subparagraph shall not apply to service performed in a  
 11 program established for or on behalf of an employer or group  
 12 of employers.

13 ~~(L)~~--(K) Service performed in the employ of a  
 14 hospital, if such service is performed by a patient of the  
 15 hospital.

16 (k) "Employment office" means a free public employment  
 17 office, or branch thereof, operated by this state or  
 18 maintained as a part of a state-controlled system of public  
 19 employment offices, or such other free public employment  
 20 offices operated and maintained by the United States  
 21 government or its instrumentalities, as the division may  
 22 approve.

23 (l) "Fund" means the unemployment compensation fund  
 24 established by this act, to which all contributions and  
 25 payments in lieu of contributions are required and from

1 which all benefits provided under this act shall be paid.

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

5 (n) "Institution of higher education" for the purposes  
 6 of this section, means an education institution which:

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

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

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

18 (4) is a public or other nonprofit institution.

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

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

1 (p) "Board" means the board of labor appeals, provided  
 2 for in Title 82A, chapter 10."

-End-

March 17, 1975

SENATE COMMITTEE OF THE WHOLE  
AMENDMENTS TO HOUSE BILL NO. 95

That House Bill No. 95, third reading, be amended as follows:

1. Amend page 12, section 3, lines 15 through 18 and line 19.  
Following: "individuals"  
Strike: "in the employ of this state, OTHER THAN ELECTED  
PUBLIC OFFICIALS,"  
Insert: "including without limitations those individuals"
2. Amend page 12, section 3, line 24.  
Following: "WAGES."  
Insert: " "Employment" shall not include elected public  
officials."

HOUSE BILL NO. 95

INTRODUCED BY MAGONE, SHELDEN, W. BAETH, CONROY,

KANDUCH, PALMER, ELLIS, HELMBRECHT, DUSSAULT, MCKITTRICK

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 87-105, 87-110 AND 87-148, R.C.M. 1947, TO COVER ALL PUBLIC EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAWS."

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

SECTION 1. SECTION 87-105, R.C.M. 1947, IS AMENDED TO

READ AS FOLLOWS:

"87-105. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission division finds that--

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the commission division may prescribe, except that the commission division may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto;

(3) Unless it occurs within the benefit year of the



1 claimant;

2 (4) Unless it occurs after benefits first could become  
3 payable to any individual under this act.

4 (e) An individual who received benefits during a  
5 benefit year must perform services for remuneration after  
6 the beginning of that year as a condition for receiving  
7 benefits in a second benefit year. The service may be in  
8 either covered or noncovered employment, however, the  
9 individual must have earned the lesser of three-thirteenths  
10 (3/13) of his high quarter of his second benefit year or six  
11 (6) times his weekly benefit amount of that same year.

12 (f) Benefits based on service in employment defined in  
13 section 87-148 (j) (6) and (7) and section 87-110 (d) shall  
14 be payable in the same amount, on the same terms and subject  
15 to the same conditions as compensation payable on the basis  
16 of other service subject to this act; except that benefits  
17 based on service in an instructional, research, or principal  
18 administrative capacity in a public school of the state of  
19 Montana, or in an institution of higher education (as  
20 defined in section 87-148 (n)) shall not be paid to an  
21 individual for any week of unemployment which begins during  
22 the period between two successive academic years, or during  
23 a similar period between two regular terms, whether or not  
24 successive, or during a period of paid sabbatical leave  
25 provided for in the individual's contract, if the individual

1 has a contract or contracts to perform services in any such  
2 capacity for any such public school, institution, or  
3 institutions of higher education for both such academic  
4 years or both such terms."

5 Section 2. Section 87-110, R.C.M. 1947, is amended to  
6 read as follows:

7 "87-110. Period, election and termination of  
8 employer's coverage. (a) Any employing unit which is or  
9 becomes an employer subject to this act within any calendar  
10 year, shall be subject to this act during the whole of such  
11 calendar year, except that this subsection shall not apply  
12 to an employing unit electing coverage as provided for in  
13 ~~subsections~~ subsection (c) and (d) of this section.

14 (b) Except as otherwise provided in subsection (c) and  
15 ~~(d)~~ of this section an employing unit shall cease to be an  
16 employer subject to this act only as of the first day of  
17 January, of any calendar year, only if it files with the  
18 division prior to the last day of February, of such year, a  
19 written application for termination of coverage, and the  
20 division finds that the total wages payable for employment  
21 by said employer in the preceding calendar year did not  
22 exceed five hundred dollars (\$500). For the purpose of this  
23 subsection, the two (2) or more employing units mentioned in  
24 paragraph (2) or (3) of section 87-148 (i) shall be treated  
25 as a single employing unit.

1 (c) An employing unit not otherwise subject to this  
 2 act, or any employing unit for which services are performed  
 3 that do not constitute employment as defined in this act,  
 4 may file with the division, a written election that all such  
 5 services performed by individuals in its employ in one (1)  
 6 or more distinct establishments or places of business shall  
 7 be deemed to constitute employment for all purposes of this  
 8 act for not less than two (2) calendar years. Upon the  
 9 written approval of such election by the division, such  
 10 services shall be deemed to constitute employment subject to  
 11 this act from and after the date stated in such approval.  
 12 Such services shall cease to be deemed employment subject  
 13 hereto as of January 1, of any calendar year subsequent to  
 14 such two (2) calendar years only if at least thirty (30)  
 15 days prior to such first day of January such employing unit  
 16 has filed with the division a written notice to that  
 17 effect."

18 ~~(d) Any political subdivision of this state may elect~~  
 19 ~~to cover under this act service performed by employees in~~  
 20 ~~all the hospitals and institutions of higher education as~~  
 21 ~~defined in section 87-148 (n) and (o), operated by such~~  
 22 ~~political subdivision. The election may exclude any services~~  
 23 ~~described in section 87-148 (j) (7) (2). Election is to be~~  
 24 ~~made by filing with the division a written notice of such~~  
 25 ~~election. The effective date of the written election shall~~

1 ~~be any date after December 31, 1971, designated by the~~  
 2 ~~employing unit, provided that the date shall not be prior to~~  
 3 ~~January 1 of the calendar year in which the written election~~  
 4 ~~has been filed. Any political subdivision electing coverage~~  
 5 ~~under this subsection shall make payments in lieu of~~  
 6 ~~contributions with respect to benefits attributable to such~~  
 7 ~~employment as provided in section 87-109 (b) (4). An~~  
 8 ~~election under this section may be terminated, by filing~~  
 9 ~~with the division written notice not later than thirty (30)~~  
 10 ~~days preceding the last day of the calendar year in which~~  
 11 ~~the termination is to be effective. Such termination becomes~~  
 12 ~~effective as of the first day of the next ensuing calendar~~  
 13 ~~year with respect to services performed after that date~~

14 Section 3. Section 87-148, R.C.M. 1947, is amended to  
 15 read as follows:

16 "87-148. Definitions. As used in this act, unless the  
 17 context clearly requires otherwise:

18 (a) "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 (b) "Benefits" means the money payments payable to an  
 22 individual, as provided in this act, with respect to his  
 23 unemployment.

24 (c) "Base period" means the first four (4) of the last  
 25 five (5) completed calendar quarters immediately preceding

1 the first day of an individual's benefit year provided,  
 2 however, that in the case of a combined-wage claim pursuant  
 3 to the arrangement approved by the secretary of labor of the  
 4 United States, the base period shall be that applicable  
 5 under the unemployment law of the paying state.

6 (d) "Benefit year" with respect to any individual  
 7 means, the fifty-two (52) consecutive-week period beginning  
 8 with the first day of the calendar week in which such  
 9 individual files a valid claim, and thereafter the fifty-two  
 10 (52) consecutive-week period beginning with the first day of  
 11 the calendar week in which such individual files his next  
 12 valid claim after the termination of his last preceding  
 13 benefit year, provided that if such filing shall result in  
 14 an overlapping of benefit years the new benefit year shall  
 15 begin upon the first Sunday following the expiration of his  
 16 last preceding benefit year provided, however, that in the  
 17 case of a combined-wage claim pursuant to the arrangement  
 18 approved by the secretary of labor of the United States, the  
 19 base period shall be that applicable under the unemployment  
 20 law of the paying state.

21 (e) "Calendar quarter" means the period of three (3)  
 22 consecutive calendar months ending on March 31, June 30,  
 23 September 30, or December 31.

24 (f) "Division" means the employment security division  
 25 of the department of labor and industry provided for in

1 Title 82A, chapter 10, R.C.M. 1947.

2 (g) "Contributions" means the money payments to the  
 3 state unemployment compensation fund required by this act.

4 (h) "Employing unit" means any individual or type of  
 5 organization, including the state government, any of its  
 6 political subdivisions or instrumentalities, any  
 7 partnership, association, trust, estate, joint-stock  
 8 company, insurance company or corporation, whether domestic  
 9 or foreign, or the receiver, trustee in bankruptcy, trustee  
 10 or successor thereof, or the legal representative of a  
 11 deceased person, which has or subsequent to January 1, 1936,  
 12 had in its employ one (1) or more individuals performing  
 13 services for it within this state; and all individuals  
 14 performing services within this state for any employing unit  
 15 which maintains two (2) or more separate establishments  
 16 within this state shall be deemed to be employed by a single  
 17 employing unit for all the purposes of this act. Each  
 18 individual employed to perform or assist in performing the  
 19 work of any agent or employee of an employing unit shall be  
 20 deemed to be employed by such employing unit for the  
 21 purposes of this act, whether such individual was hired or  
 22 paid directly by such employing unit or by such agent or  
 23 employee, provided the employing unit has actual or  
 24 constructive knowledge of the work.

25 (i) "Employer" means:

1 (1) Any employing unit whose total annual payroll  
2 within either the current or preceding calendar year,  
3 exceeds the sum of five hundred dollars (\$500);

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

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

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

25 (5) Any employing unit which, having become an

1 employer under paragraph (1), (2), or (3), or (4), has not,  
2 under section 87-110, ceased to be an employer subject to  
3 this act; or

4 (6) For the effective period of its election pursuant  
5 to section 87-110 (c) and (d) any other employing unit which  
6 has elected to become fully subject to this act.

7 (j) (1) "Employment" subject to other provisions of  
8 this subsection means service by an individual or by an  
9 officer of a corporation, including service in interstate  
10 commerce, performed for wages or under any contract of hire,  
11 written or oral, express or implied.

12 (2) The term "employment" shall include an  
13 individual's entire service, performed within or both within  
14 and without this state if:

15 (A) The service is localized in this state; or

16 (B) The service is not localized in any state but some  
17 of the service is performed in this state and (I) the base  
18 of operations, or, if there is no base of operations, then  
19 the place from which such service is directed or controlled,  
20 is in this state; or (II) the base of operations or place  
21 from which such service is directed or controlled is not in  
22 any state in which some part of the service is performed,  
23 but the individual's residence is in this state.

24 (3) Service not covered under paragraph (2) of this  
25 subsection, and performed entirely without this state with

1 respect to no part of which contributions are required and  
 2 paid under an unemployment compensation law of any other  
 3 state or of the federal government, shall be deemed to be  
 4 employment subject to this act if the individual performing  
 5 such services is a resident of this state and the division  
 6 approves the election of the employing unit for whom such  
 7 services are performed that the entire service of such  
 8 individual shall be deemed to be employment subject to this  
 9 act.

10 (4) Service shall be deemed to be localized within a  
 11 state if--

12 (A) The service is performed entirely within such  
 13 state; or

14 (B) The service is performed both within and without  
 15 such state, but the service performed without such state is  
 16 incidental to the individual's service within the state, for  
 17 example, is temporary or transitory in nature or consists of  
 18 isolated transactions.

19 (5) Services performed by an individual for wages shall  
 20 be deemed to be employment subject to this act unless and  
 21 until it is shown to the satisfaction of the division that:

22 (A) Such individual has been and will continue to be  
 23 free from control or direction over the performance of such  
 24 services, both under his contract and in fact; and

25 (B) Such service is either outside the usual course of

1 the business for which such service is performed, or that  
 2 such service is performed outside of all the places of  
 3 business of the enterprise for which such service is  
 4 performed; and

5 (C) Such individual is customarily engaged in an  
 6 independently established trade, occupation, profession or  
 7 business.

8 (6) The term "employment" shall include service  
 9 performed after December 31, 1971, by an individual in the  
 10 employ of this state or any of its instrumentalities (or in  
 11 the employ of this state and one (1) or more other states or  
 12 their instrumentalities) for a hospital or institution of  
 13 higher education located in this state. Effective after  
 14 ~~December 31, 1974~~ JULY 1, 1975, the term "employment" shall  
 15 include service performed by all individuals ~~in the employ~~  
 16 ~~of this state, or any of the political subdivisions thereof,~~  
 17 ~~or of any of its instrumentalities (or in the employ of this~~  
 18 ~~state, or any of the political subdivisions thereof, OTHER~~  
 19 ~~PHAN-ELECTED PUBLIC OFFICIALS,~~ INCLUDING WITHOUT LIMITATIONS  
 20 THOSE INDIVIDUALS WHO WORK FOR THE STATE OF MONTANA, ITS  
 21 UNIVERSITY, ANY OF ITS COLLEGES, PUBLIC SCHOOLS, COMPONENTS  
 22 OR UNITS THEREOF, OR ANY LOCAL GOVERNMENT UNIT, and one (1)  
 23 or more other states or their instrumentalities or political  
 24 subdivisions} WHOSE SERVICES ARE COMPENSATED BY SALARY OR  
 25 WAGES. "EMPLOYMENT" SHALL NOT INCLUDE ELECTED PUBLIC

1 OFFICIALS.

2 (7) The term "employment" shall include service  
 3 performed after December 31, 1971, by an individual in the  
 4 employ of a religious, charitable, scientific, literary, or  
 5 educational organization.

6 (A) For the purposes of paragraph (7) of this  
 7 subsection the term "employment" does not apply to service  
 8 performed:

9 (1) In the employ of a church or convention or  
 10 association of churches, or an organization which is  
 11 operated primarily for religious purposes and which is  
 12 operated, supervised, controlled, or principally supported  
 13 by a church or convention or association of churches; or

14 (2) By a duly ordained, commissioned, or licensed  
 15 minister of a church in the exercise of his ministry or by a  
 16 member of a religious order in the exercise of duties  
 17 required by such order; or

18 (3) In the employ of a school which is not an  
 19 institution of higher education; or

20 (4) In a facility conducted for the purpose of  
 21 carrying out a program of rehabilitation for individuals  
 22 whose earning capacity is impaired by age or physical or  
 23 mental deficiency or injury or providing remunerative work  
 24 for individuals who because of their impaired physical or  
 25 mental capacity cannot be readily absorbed in the

1 competitive labor market by an individual receiving such  
 2 rehabilitation or remunerative work; or

3 (5) Services performed as part of an unemployment  
 4 work-relief or work-training program assisted or financed in  
 5 whole or in part by any federal agency or any agency of a  
 6 state or political subdivision thereof, by an individual  
 7 receiving such work relief or work training; or

8 (6) Services performed for a hospital in a state  
 9 prison or other state correctional institution by an inmate  
 10 of the prison or correctional institution.

11 (8) The term "employment" shall include the service of  
 12 an individual who is a citizen of the United States,  
 13 performed outside the United States (except in Canada or the  
 14 Virgin Islands), after December 31, 1971, in the employ of  
 15 an American employer (other than service which is deemed  
 16 "employment" under the provisions of subparagraphs (2) or  
 17 (4) of this subsection or the parallel provisions of another  
 18 state's law), if:

19 (A) The employer's principal place of business in the  
 20 United States is located in this state; or

21 (B) The employer has no place of business in the  
 22 United States, but

23 (1) The employer is an individual who is a resident  
 24 of this state; or

25 (2) The employer is a corporation which is

1 organized under the laws of this state; or

2 (3) The employer is a partnership or a trust and  
3 the number of the partners or trustees who are residents of  
4 this state is greater than the number who are residents of  
5 any other state; or

6 (C) None of the criteria of divisions (A) and (B) of  
7 this subparagraph is met but the employer has elected  
8 coverage in this state or, the employer having failed to  
9 elect coverage in any state, the individual has filed a  
10 claim for benefits, based on such service, under the law of  
11 this state.

12 (D) An "American employer," for purposes of this  
13 paragraph, means a person who is:

14 (1) An individual who is a resident of the United  
15 States; or

16 (2) A partnership if two-thirds (2/3) or more of  
17 the partners are residents of the United States; or

18 (3) A trust, if all of the trustees are residents  
19 of the United States; or

20 (4) A corporation organized under the laws of the  
21 United States or of any state.

22 (9) The term "employment" shall not include:

23 (A) Agricultural labor; the term "agricultural labor"  
24 includes all services performed prior to January 1, 1972,  
25 which was agricultural labor as defined in this subparagraph

1 prior to such date, and remunerated services performed after  
2 December 31, 1971:

3 (1) On a farm, in the employ of any person in  
4 connection with cultivating the soil, or in connection with  
5 raising or harvesting any agricultural or horticultural  
6 commodity, including the raising, shearing, feeding, caring  
7 for, training, and management of livestock, bees, poultry  
8 and fur-bearing animals and wildlife.

9 (2) In the employ of the owner or tenant or other  
10 operator of a farm, in connection with the operation,  
11 management, conservation, improvement, or maintenance of  
12 such farm and its tools and equipment, or in salvaging  
13 timber or clearing land of brush and other debris left by a  
14 hurricane, if the major part of such service is performed on  
15 a farm.

16 (3) In connection with the production or harvesting  
17 of any commodity commonly known as agricultural commodities,  
18 or in connection with the hatching of poultry, or in  
19 connection with the operation or maintenance of ditches,  
20 canals, reservoirs, or waterways used exclusively for  
21 supplying and storing water for farming purposes.

22 (4) In the employ of the operator of a farm or a  
23 group of operators of farms (or a co-operative organization  
24 of which such operators are members) in handling, planting,  
25 drying, packing, packaging, processing, freezing, grading,

1 storing, or delivering to storage or to market or to a  
 2 carrier for transportation to market, in its unmanufactured  
 3 state, any agricultural or horticultural commodity; but only  
 4 if such operator or operators produced more than one-half  
 5 (1/2) of the commodity with respect to which such service is  
 6 performed.

7 (5) The provisions of paragraphs (1), (2), (3), and  
 8 (4) shall not be deemed to be applicable with respect to  
 9 service performed in connection with commercial canning or  
 10 commercial freezing or in connection with any agricultural  
 11 or horticultural commodity after its delivery to a terminal  
 12 market for distribution for consumption; or on a farm  
 13 operated for profit if such service is not in the course of  
 14 the employer's trade or business or is domestic service in a  
 15 private home of the employer.

16 (6) As used in this section, the term "farm"  
 17 includes stock, dairy, poultry, fruit, fur-bearing animals,  
 18 and truck farms, plantations, ranches, nurseries, ranges,  
 19 greenhouses or other similar structures used primarily for  
 20 the raising of agricultural or horticultural commodities and  
 21 orchards.

22 (B) Domestic service in a private home, local college  
 23 club or local chapter of a college fraternity or sorority;

24 (C) Service performed as an officer or member of the  
 25 crew of a vessel on the navigable waters of the United

1 States;

2 (D) Service performed by an individual in the employ  
 3 of his son, daughter, or spouse, and service performed by a  
 4 child under the age of ~~twenty-one (21)~~ EIGHTEEN (18) in the  
 5 employ of his father or mother;

6 ~~(E) -- Service performed in the employ of this state,~~  
 7 ~~except as provided in subsection (j) (6) of this section, or~~  
 8 ~~of any political subdivision thereof, which has not elected~~  
 9 ~~coverage pursuant to section 67-119 (d);~~

10 ~~(F) -- (E)~~ Service performed in the employ of any other  
 11 state or its political subdivisions, or of the United States  
 12 government, or of an instrumentality of any other state or  
 13 states or their political subdivisions or of the United  
 14 States, except that national banks organized under the  
 15 national banking law shall not be entitled to exemption  
 16 under this section and shall be subject to this act the same  
 17 as state banks;

18 ~~(G) -- (F)~~ Service with respect to which unemployment  
 19 compensation is payable under an unemployment compensation  
 20 system established by an act of Congress; provided, that the  
 21 division is hereby authorized and directed to enter into  
 22 agreements with the proper agencies under such act of  
 23 Congress, which agreements shall become effective ten (10)  
 24 days after publication thereof in the manner in section  
 25 87-121 for general rules, to provide reciprocal treatment to



1 individuals who have, after acquiring potential rights to  
 2 benefits under this act, acquired rights to unemployment  
 3 compensation under such act of Congress, or who have, after  
 4 acquiring potential rights to unemployment compensation  
 5 under such act of Congress, acquired rights to benefits  
 6 under this act;

7 ~~(H)~~--(G) Services performed in the delivery and  
 8 distribution of newspapers or shopping news from house to  
 9 house and business establishments by an individual under the  
 10 age of eighteen (18) years, but not including the delivery  
 11 or distribution to any point or points for subsequent  
 12 delivery or distribution.

13 ~~(I)~~--(H) Services performed by real estate, securities  
 14 and insurance salesmen paid solely by commissions and  
 15 without guarantee of minimum earnings.

16 ~~(J)~~--(I) Service performed, in the employ of a school,  
 17 college, or university, if such service is performed by a  
 18 student who is enrolled and is regularly attending classes  
 19 at such school, college or university, or by the spouse of  
 20 such a student, if such spouse is advised, at the time such  
 21 spouse commences to perform such service, that the  
 22 employment of such spouse to perform such service is  
 23 provided under a program to provide financial assistance to  
 24 such student by such school, college, or university, and  
 25 such employment will not be covered by any program of

1 unemployment insurance.

2 ~~(K)~~--(J) Service performed by an individual under the  
 3 age of twenty-two (22) who is enrolled at a nonprofit or  
 4 public educational institution which normally maintains a  
 5 regular faculty and curriculum and normally has a regularly  
 6 organized body of students in attendance at the place where  
 7 its educational activities are carried on as a student in a  
 8 full-time program, taken for credit at such institution,  
 9 which combines academic instruction with work experience, if  
 10 such service is an integral part of such program, and such  
 11 institution has so certified to the employer, except that  
 12 this subparagraph shall not apply to service performed in a  
 13 program established for or on behalf of an employer or group  
 14 of employers.

15 ~~(L)~~--(K) Service performed in the employ of a  
 16 hospital, if such service is performed by a patient of the  
 17 hospital.

18 (k) "Employment office" means a free public employment  
 19 office, or branch thereof, operated by this state or  
 20 maintained as a part of a state-controlled system of public  
 21 employment offices, or such other free public employment  
 22 offices operated and maintained by the United States  
 23 government or its instrumentalities, as the division may  
 24 approve.

25 (l) "Fund" means the unemployment compensation fund

1 established by this act, to which all contributions and  
2 payments in lieu of contributions are required and from  
3 which all benefits provided under this act shall be paid.

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

7 (n) "Institution of higher education" for the purposes  
8 of this section, means an education institution which:

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

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

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

20 (4) is a public or other nonprofit institution.

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

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

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

3 (p) "Board" means the board of labor appeals, provided  
4 for in Title 82A, chapter 10."

-End-