

1 *Senate* BILL NO. *324*  
 2 INTRODUCED BY *Earl Farkner, Blaylock, Norman*  
 3 *Tennage Roseil*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
 5 87-105 AND 87-148, R.C.M. 1947, BY PROVIDING UNEMPLOYMENT  
 6 COMPENSATION COVERAGE TO ALL INDIVIDUALS PERFORMING SERVICE  
 7 IN THE EMPLOY OF THE STATE, ITS INSTRUMENTALITIES AND  
 8 POLITICAL SUBDIVISIONS, PUBLIC SCHOOL DISTRICTS, AND LOCAL  
 9 GOVERNMENT UNITS, AFTER JULY 1, 1975, AND MAKING SCHOOL  
 10 EMPLOYEES INELIGIBLE FOR BENEFITS DURING CUSTOMARY SCHOOL  
 11 VACATION PERIOD OR DURING PAID SABBATICAL LEAVE."

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

14 Section 1. Section 87-105, R.C.M. 1947, is amended to  
 15 read as follows:

16 "87-105. Benefit eligibility conditions. An unemployed  
 17 individual shall be eligible to receive benefits for any  
 18 week of total unemployment within his benefit year; only if  
 19 the commission finds that--

20 (a) He has registered for work at and thereafter has  
 21 continued to report at an employment office in accordance  
 22 with such regulation as the commission may prescribe, except  
 23 that the commission may, by regulation, prescribe that such  
 24 types of cases or situations with respect to which it finds  
 25 that compliance with such requirements would be oppressive,

1 or would be inconsistent with the purposes of this act,  
 2 provide for registration and reporting for work by mail or  
 3 through other governmental agencies.

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

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

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

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

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

3 (3) Unless it occurs within the benefit year of the  
4 claimant;

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

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

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

1 whether or not successive, or during a period of paid  
2 sabbatical leave provided for in the individual's contract,  
3 if the individual has a contract or contracts to perform  
4 services in any such capacity for any institution or  
5 institutions of higher education for both such academic  
6 years or both such terms, and provided further that benefits  
7 based on service in a public school district shall not be  
8 paid to an individual for any week of unemployment which  
9 begins during the customary school vacation period between  
10 two successive academic terms or for any period of paid  
11 sabbatical leave provided for in the individual's contract."

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

14 "87-148. Definitions. As used in this act, unless the  
15 context clearly requires otherwise:

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

19 (b) "Benefits" means the money payments payable to an  
20 individual, as provided in this act, with respect to his  
21 unemployment.

22 (c) "Base period" means the first four (4) of the last  
23 five (5) completed calendar quarters immediately preceding  
24 the first day of an individual's benefit year provided,  
25 however, that in the case of a combined-wage claim pursuant

1 to the arrangement approved by the secretary of labor of the  
2 United States, the base period shall be that applicable  
3 under the unemployment law of the paying state.

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

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

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

25 (g) "Contributions" means the money payments to the

1 state unemployment compensation fund required by this act.

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

23 (i) "Employer" means:

24 (1) Any employing unit whose total annual payroll  
25 within either the current or preceding calendar year,

1 exceeds the sum of five hundred dollars (\$500);

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

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

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

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

1 act; or

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

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

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

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

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

22 (3) Service not covered under paragraph (2) of this  
23 subsection, and performed entirely without this state with  
24 respect to no part of which contributions are required and  
25 paid under an unemployment compensation law of any other

1 state or of the federal government, shall be deemed to be  
 2 employment subject to this act if the individual performing  
 3 such services is a resident of this state and the division  
 4 approves the election of the employing unit for whom such  
 5 services are performed that the entire service of such  
 6 individual shall be deemed to be employment subject to this  
 7 act.

8 (4) Service shall be deemed to be localized within a  
 9 state if--

10 (A) The service is performed entirely within such  
 11 state; or

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

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

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

23 (B) Such service is either outside the usual course of  
 24 the business for which such service is performed, or that  
 25 such service is performed outside of all the places of

1 business of the enterprise for which such service is  
 2 performed; and

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

6 (6) The term "employment" shall include service  
 7 performed after December 31, 1971, by an individual in the  
 8 employ of this state or any of its instrumentalities (or in  
 9 the employ of this state and one (1) or more other states or  
 10 their instrumentalities) for a hospital or institution of  
 11 higher education located in this state. Effective after  
 12 December 31, 1974, the term "employment" shall include  
 13 service performed by all individuals in the employ of this  
 14 state or of any of its instrumentalities, and effective  
 15 after July 1, 1975, the term "employment" shall include  
 16 service performed by all individuals, except elected  
 17 officials, in the employ of this state, its  
 18 instrumentalities and political subdivisions, public school  
 19 districts, and local government units (or in the employ of  
 20 this state and one (1) or more other states or their  
 21 instrumentalities).

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

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

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

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

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

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

23 (5) Services performed as part of an unemployment  
24 work-relief or work-training program assisted or financed in  
25 whole or in part by any federal agency or any agency of a

1 state or political subdivision thereof, by an individual  
2 receiving such work relief or work training; or

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

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

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

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

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

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

22 (3) The employer is a partnership or a trust and the  
23 number of the partners or trustees who are residents of this  
24 state is greater than the number who are residents of any  
25 other state; or

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

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

9 (1) An individual who is a resident of the United  
 10 States; or

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

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

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

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

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

23 (1) On a farm, in the employ of any person in  
 24 connection with cultivating the soil, or in connection with  
 25 raising or harvesting any agricultural or horticultural

1 commodity, including the raising, shearing, feeding, caring  
 2 for, training, and management of livestock, bees, poultry  
 3 and fur-bearing animals and wildlife.

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

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

17 (4) In the employ of the operator of a farm or a  
 18 group of operators of farms (or a co-operative organization  
 19 of which such operators are members) in handling, planting,  
 20 drying, packing, packaging, processing, freezing, grading,  
 21 storing, or delivering to storage or to market or to a  
 22 carrier for transportation to market, in its unmanufactured  
 23 state, any agricultural or horticultural commodity; but only  
 24 if such operator or operators produced more than one-half  
 25 (1/2) of the commodity with respect to which such service is

1 performed.

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

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

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

19 (C) Service performed as an officer or member of the  
20 crew of a vessel on the navigable waters of the United  
21 States;

22 (D) Service performed by an individual in the employ of  
23 his son, daughter, or spouse, and service performed by a  
24 child under the age of twenty-one (21) in the employ of his  
25 father or mother;

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

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

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



1 under this act;

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

8 ~~(I)~~ (H) Services performed by real estate, securities  
9 and insurance salesmen paid solely by commissions and  
10 without guarantee of minimum earnings.

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

22 ~~(K)~~ (J) Service performed by an individual under the  
23 age of twenty-two (22) who is enrolled at a nonprofit or  
24 public educational institution which normally maintains a  
25 regular faculty and curriculum and normally has a regularly

1 organized body of students in attendance at the place where  
2 its educational activities are carried on as a student in a  
3 full-time program, taken for credit at such institution,  
4 which combines academic instruction with work experience, if  
5 such service is an integral part of such program, and such  
6 institution has so certified to the employer, except that  
7 this subparagraph shall not apply to service performed in a  
8 program established for or on behalf of an employer or group  
9 of employers.

10 ~~(L)~~ (K) Service performed in the employ of a hospital,  
11 if such service is performed by a patient of the hospital.

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

19 (l) "Fund" means the unemployment compensation fund  
20 established by this act, to which all contributions and  
21 payments in lieu of contributions are required and from  
22 which all benefits provided under this act shall be paid.

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

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

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

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

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

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

15 (5) Notwithstanding any of the foregoing provisions of  
16 this subsection, all colleges and universities in this state  
17 are institutions of higher education for purposes of this  
18 section.

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

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

-End-

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 1975, 19 \_\_\_\_\_, there is hereby submitted a Fiscal Note for Senate Bill 324 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:

Senate Bill 324 provides unemployment compensation coverage to all individuals performing services in the employ of the state, its instrumentalities and political subdivisions, public school districts, and local government units, after July 1, 1975, and makes school employees ineligible for benefits during customary school vacation period or during paid sabbatical leave.

## ASSUMPTIONS:

1. Senate Bill 324 would extend unemployment compensation coverage to city, county, and public school 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:

	FY 76	FY 77
Estimated increase in employment security revenue by source		
Counties	\$ 175,000	\$ 190,000
Cities	165,000	180,000
School Districts	<u>540,000</u>	<u>568,000</u>
Total estimated increase in revenue	<u>\$ 880,000</u>	<u>\$ 938,000</u>

Enactment of Senate Bill 324 will result in an estimated \$1,818,000 increase in local government tax collections during the biennium.

*Michael Bellings*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 4, 1975

Approved by Committee  
on Education

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2 INTRODUCED BY *Law Fashender, B. Arnold, Norman*  
3 *Thurage Rosell*

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8 POLITICAL SUBDIVISIONS, PUBLIC SCHOOL DISTRICTS, AND LOCAL  
9 GOVERNMENT UNITS, AFTER JULY 1, 1975, AND MAKING SCHOOL  
10 EMPLOYEES INELIGIBLE FOR BENEFITS DURING CUSTOMARY SCHOOL  
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21 continued to report at an employment office in accordance  
22 with such regulation as the commission may prescribe, except  
23 that the commission may, by regulation, prescribe that such  
24 types of cases or situations with respect to which it finds  
25 that compliance with such requirements would be oppressive,

1 or would be inconsistent with the purposes of this act,  
2 provide for registration and reporting for work by mail or  
3 through other governmental agencies.

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

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

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

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

1 (2) Unless the individual was eligible for benefits  
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8 benefit year must perform services for remuneration after  
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10 benefits in a second benefit year. The service may be in  
11 either covered or noncovered employment, however, the  
12 individual must have earned the lesser of three-thirteenths  
13 (3/13) of his high quarter of his second benefit year or six  
14 (6) times his weekly benefit amount of that same year.

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

1 whether or not successive, or during a period of paid  
2 sabbatical leave provided for in the individual's contract,  
3 if the individual has a contract or contracts to perform  
4 services in any such capacity for any institution or  
5 institutions of higher education for both such academic  
6 years or both such terms, and provided further that benefits  
7 based on service in a public school district shall not be  
8 paid to an individual for any week of unemployment which  
9 begins during the customary school vacation period between  
10 two successive academic terms or for any period of paid  
11 sabbatical leave provided for in the individual's contract."

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

14 "87-148. Definitions. As used in this act, unless the  
15 context clearly requires otherwise:

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

19 (b) "Benefits" means the money payments payable to an  
20 individual, as provided in this act, with respect to his  
21 unemployment.

22 (c) "Base period" means the first four (4) of the last  
23 five (5) completed calendar quarters immediately preceding  
24 the first day of an individual's benefit year provided,  
25 however, that in the case of a combined-wage claim pursuant

1 to the arrangement approved by the secretary of labor of the  
2 United States, the base period shall be that applicable  
3 under the unemployment law of the paying state.

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

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

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

25 (g) "Contributions" means the money payments to the

1 state unemployment compensation fund required by this act.

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

23 (i) "Employer" means:

24 (1) Any employing unit whose total annual payroll  
25 within either the current or preceding calendar year,

1 exceeds the sum of five hundred dollars (\$500);

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

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

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

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

1 act; or

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

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

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

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

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

22 (3) Service not covered under paragraph (2) of this  
23 subsection, and performed entirely without this state with  
24 respect to no part of which contributions are required and  
25 paid under an unemployment compensation law of any other

1 state or of the federal government, shall be deemed to be  
 2 employment subject to this act if the individual performing  
 3 such services is a resident of this state and the division  
 4 approves the election of the employing unit for whom such  
 5 services are performed that the entire service of such  
 6 individual shall be deemed to be employment subject to this  
 7 act.

8 (4) Service shall be deemed to be localized within a  
 9 state if--

10 (A) The service is performed entirely within such  
 11 state; or

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

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

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

23 (B) Such service is either outside the usual course of  
 24 the business for which such service is performed, or that  
 25 such service is performed outside of all the places of

1 business of the enterprise for which such service is  
 2 performed; and

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

6 (6) The term "employment" shall include service  
 7 performed after December 31, 1971, by an individual in the  
 8 employ of this state or any of its instrumentalities (or in  
 9 the employ of this state and one (1) or more other states or  
 10 their instrumentalities) for a hospital or institution of  
 11 higher education located in this state. Effective after  
 12 December 31, 1974, the term "employment" shall include  
 13 service performed by all individuals in the employ of this  
 14 state or of any of its instrumentalities, and effective  
 15 after July 1, 1975, the term "employment" shall include  
 16 service performed by all individuals, except elected  
 17 officials, in the employ of this state, its  
 18 instrumentalities and political subdivisions, public school  
 19 districts, and local government units (or in the employ of  
 20 this state and one (1) or more other states or their  
 21 instrumentalities).

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



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

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

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

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

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

23 (5) Services performed as part of an unemployment  
24 work-relief or work-training program assisted or financed in  
25 whole or in part by any federal agency or any agency of a

1 state or political subdivision thereof, by an individual  
2 receiving such work relief or work training; or

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

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

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

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

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

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

22 (3) The employer is a partnership or a trust and the  
23 number of the partners or trustees who are residents of this  
24 state is greater than the number who are residents of any  
25 other state; or

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

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

9 (1) An individual who is a resident of the United  
 10 States; or

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

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

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

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

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

23 (1) On a farm, in the employ of any person in  
 24 connection with cultivating the soil, or in connection with  
 25 raising or harvesting any agricultural or horticultural

1 commodity, including the raising, shearing, feeding, caring  
 2 for, training, and management of livestock, bees, poultry  
 3 and fur-bearing animals and wildlife.

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

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

17 (4) In the employ of the operator of a farm or a  
 18 group of operators of farms (or a co-operative organization  
 19 of which such operators are members) in handling, planting,  
 20 drying, packing, packaging, processing, freezing, grading,  
 21 storing, or delivering to storage or to market or to a  
 22 carrier for transportation to market, in its unmanufactured  
 23 state, any agricultural or horticultural commodity; but only  
 24 if such operator or operators produced more than one-half  
 25 (1/2) of the commodity with respect to which such service is

1 performed.

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

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

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

19 (C) Service performed as an officer or member of the  
20 crew of a vessel on the navigable waters of the United  
21 States;

22 (D) Service performed by an individual in the employ of  
23 his son, daughter, or spouse, and service performed by a  
24 child under the age of twenty-one (21) in the employ of his  
25 father or mother;

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

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

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

1 under this act;

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

8 ~~(I)~~ (H) Services performed by real estate, securities  
9 and insurance salesmen paid solely by commissions and  
10 without guarantee of minimum earnings.

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

22 ~~(K)~~ (J) Service performed by an individual under the  
23 age of twenty-two (22) who is enrolled at a nonprofit or  
24 public educational institution which normally maintains a  
25 regular faculty and curriculum and normally has a regularly

1 organized body of students in attendance at the place where  
2 its educational activities are carried on as a student in a  
3 full-time program, taken for credit at such institution,  
4 which combines academic instruction with work experience, if  
5 such service is an integral part of such program, and such  
6 institution has so certified to the employer, except that  
7 this subparagraph shall not apply to service performed in a  
8 program established for or on behalf of an employer or group  
9 of employers.

10 ~~(L)~~ (K) Service performed in the employ of a hospital,  
11 if such service is performed by a patient of the hospital.

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

19 (l) "Fund" means the unemployment compensation fund  
20 established by this act, to which all contributions and  
21 payments in lieu of contributions are required and from  
22 which all benefits provided under this act shall be paid.

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

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

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

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

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

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

15 (5) Notwithstanding any of the foregoing provisions of  
16 this subsection, all colleges and universities in this state  
17 are institutions of higher education for purposes of this  
18 section.

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

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

-End-

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INTRODUCED BY *Senate* BILL NO. *324*  
*Law - Farkender Blaylock Norman*  
*Tennage Rosell*

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 87-105 AND 87-148, R.C.M. 1947, BY PROVIDING UNEMPLOYMENT COMPENSATION COVERAGE TO ALL INDIVIDUALS PERFORMING SERVICE IN THE EMPLOY OF THE STATE, ITS INSTRUMENTALITIES AND POLITICAL SUBDIVISIONS, PUBLIC SCHOOL DISTRICTS, AND LOCAL GOVERNMENT UNITS, AFTER JULY 1, 1975, AND MAKING SCHOOL EMPLOYEES INELIGIBLE FOR BENEFITS DURING CUSTOMARY SCHOOL VACATION PERIOD OR DURING PAID SABBATICAL LEAVE."

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 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 may prescribe, except that the commission 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,

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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;

*SB324*

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

3 (3) Unless it occurs within the benefit year of the  
4 claimant;

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

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

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

1 whether or not successive, or during a period of paid  
2 sabbatical leave provided for in the individual's contract,  
3 if the individual has a contract or contracts to perform  
4 services in any such capacity for any institution or  
5 institutions of higher education for both such academic  
6 years or both such terms, and provided further that benefits  
7 based on service in a public school district shall not be  
8 paid to an individual for any week of unemployment which  
9 begins during the customary school vacation period between  
10 two successive academic terms or for any period of paid  
11 sabbatical leave provided for in the individual's contract."

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

14 "87-148. Definitions. As used in this act, unless the  
15 context clearly requires otherwise:

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

19 (b) "Benefits" means the money payments payable to an  
20 individual, as provided in this act, with respect to his  
21 unemployment.

22 (c) "Base period" means the first four (4) of the last  
23 five (5) completed calendar quarters immediately preceding  
24 the first day of an individual's benefit year provided,  
25 however, that in the case of a combined-wage claim pursuant

1 to the arrangement approved by the secretary of labor of the  
2 United States, the base period shall be that applicable  
3 under the unemployment law of the paying state.

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

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

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

25 (g) "Contributions" means the money payments to the

1 state unemployment compensation fund required by this act.

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

23 (i) "Employer" means:

24 (1) Any employing unit whose total annual payroll  
25 within either the current or preceding calendar year,

SB324



1 exceeds the sum of five hundred dollars (\$500);

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

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

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

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

1 act; or

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

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

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

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

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

22 (3) Service not covered under paragraph (2) of this  
23 subsection, and performed entirely without this state with  
24 respect to no part of which contributions are required and  
25 paid under an unemployment compensation law of any other

1 state or of the federal government, shall be deemed to be  
 2 employment subject to this act if the individual performing  
 3 such services is a resident of this state and the division  
 4 approves the election of the employing unit for whom such  
 5 services are performed that the entire service of such  
 6 individual shall be deemed to be employment subject to this  
 7 act.

8 (4) Service shall be deemed to be localized within a  
 9 state if--

10 (A) The service is performed entirely within such  
 11 state; or

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

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

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

23 (B) Such service is either outside the usual course of  
 24 the business for which such service is performed, or that  
 25 such service is performed outside of all the places of

1 business of the enterprise for which such service is  
 2 performed; and

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

6 (6) The term "employment" shall include service  
 7 performed after December 31, 1971, by an individual in the  
 8 employ of this state or any of its instrumentalities (or in  
 9 the employ of this state and one (1) or more other states or  
 10 their instrumentalities) for a hospital or institution of  
 11 higher education located in this state. Effective after  
 12 December 31, 1974, the term "employment" shall include  
 13 service performed by all individuals in the employ of this  
 14 state or of any of its instrumentalities, and effective  
 15 after July 1, 1975, the term "employment" shall include  
 16 service performed by all individuals, except elected  
 17 officials, in the employ of this state, its  
 18 instrumentalities and political subdivisions, public school  
 19 districts, and local government units (or in the employ of  
 20 this state and one (1) or more other states or their  
 21 instrumentalities).

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

SB324

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

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

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

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

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

23 (5) Services performed as part of an unemployment  
24 work-relief or work-training program assisted or financed in  
25 whole or in part by any federal agency or any agency of a

1 state or political subdivision thereof, by an individual  
2 receiving such work relief or work training; or

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

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

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

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

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

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

22 (3) The employer is a partnership or a trust and the  
23 number of the partners or trustees who are residents of this  
24 state is greater than the number who are residents of any  
25 other state; or

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

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

9 (1) An individual who is a resident of the United  
 10 States; or

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

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

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

17 (3) The term "employment" shall not include:

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

23 (1) On a farm, in the employ of any person in  
 24 connection with cultivating the soil, or in connection with  
 25 raising or harvesting any agricultural or horticultural

1 commodity, including the raising, shearing, feeding, caring  
 2 for, training, and management of livestock, bees, poultry  
 3 and fur-bearing animals and wildlife.

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

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

17 (4) In the employ of the operator of a farm or a  
 18 group of operators of farms (or a co-operative organization  
 19 of which such operators are members) in handling, planting,  
 20 drying, packing, packaging, processing, freezing, grading,  
 21 storing, or delivering to storage or to market or to a  
 22 carrier for transportation to market, in its unmanufactured  
 23 state, any agricultural or horticultural commodity; but only  
 24 if such operator or operators produced more than one-half  
 25 (1/2) of the commodity with respect to which such service is

53324

1 performed.

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

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

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

19 (C) Service performed as an officer or member of the  
20 crew of a vessel on the navigable waters of the United  
21 States;

22 (D) Service performed by an individual in the employ of  
23 his son, daughter, or spouse, and service performed by a  
24 child under the age of twenty-one (21) in the employ of his  
25 father or mother;

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

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

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

1 under this act;

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

8 ~~(I)~~ (H) Services performed by real estate, securities  
9 and insurance salesmen paid solely by commissions and  
10 without guarantee of minimum earnings.

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

22 ~~(K)~~ (J) Service performed by an individual under the  
23 age of twenty-two (22) who is enrolled at a nonprofit or  
24 public educational institution which normally maintains a  
25 regular faculty and curriculum and normally has a regularly

1 organized body of students in attendance at the place where  
2 its educational activities are carried on as a student in a  
3 full-time program, taken for credit at such institution,  
4 which combines academic instruction with work experience, if  
5 such service is an integral part of such program, and such  
6 institution has so certified to the employer, except that  
7 this subparagraph shall not apply to service performed in a  
8 program established for or on behalf of an employer or group  
9 of employers.

10 ~~(L)~~ (K) Service performed in the employ of a hospital,  
11 if such service is performed by a patient of the hospital.

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

19 (l) "Fund" means the unemployment compensation fund  
20 established by this act, to which all contributions and  
21 payments in lieu of contributions are required and from  
22 which all benefits provided under this act shall be paid.

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

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

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

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

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

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

15 (5) Notwithstanding any of the foregoing provisions of  
16 this subsection, all colleges and universities in this state  
17 are institutions of higher education for purposes of this  
18 section.

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

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

-End-