

1 H BILL NO. 245  
 2 INTRODUCED BY Lynch  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 6 UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN  
 7 AGRICULTURE, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED  
 8 BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976."

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

11 Section 1. Section 87-148, R.C.M. 1947, is amended to  
 12 read as follows:

13 "87-148. Definitions. As used in this act, unless the  
 14 context clearly requires otherwise:

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

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

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

1 United States, the base period shall be that applicable  
 2 under the unemployment law of the paying state.

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

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

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

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

INTRODUCED BILL

-2- HB. 245

1 (h) "Employing unit" means any individual or type of  
 2 organization, including the state government, any of its  
 3 political subdivisions or instrumentalities, any  
 4 partnership, association, trust, estate, joint-stock  
 5 company, insurance company or corporation, whether domestic  
 6 or foreign, or the receiver, trustee in bankruptcy, trustee  
 7 or successor thereof, or the legal representative of a  
 8 deceased person, which has or subsequent to January 1, 1936,  
 9 had in its employ one (1) or more individuals performing  
 10 services for it within this state; except as provided under  
 11 (i)(1)(A) and (B) of this section; 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); except:

2 (A) Agricultural labor exempted under (j)(9) of this  
 3 section shall be considered employment subject to this act  
 4 effective January 1, 1978, whenever the employing unit pays  
 5 \$20,000 or more in cash to workers for agricultural labor in  
 6 any quarter in the current or preceding calendar year or  
 7 employs 10 or more workers in agricultural labor on 20 days  
 8 in 20 different weeks during the current or preceding  
 9 calendar year. If an employer is otherwise subject to the  
 10 act and has agricultural employment, all employees are  
 11 covered under the act regardless of the amount of moneys  
 12 expended for agricultural purposes.

13 (B) Domestic service exempted under (j)(9)(B) of this  
 14 section shall be considered employment subject to this act,  
 15 effective January 1, 1978, whenever the employing unit pays  
 16 \$1,000 or more in cash for domestic service in any quarter  
 17 during the current or preceding calendar year. If an  
 18 employer is otherwise subject to the act and has domestic  
 19 employment, all employees are covered under the act  
 20 regardless of the amount of moneys expended for domestic  
 21 purposes.

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

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

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

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

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

25 (j) (1) "Employment" subject to other provisions of

1 this subsection means service by an individual or by an  
 2 officer of a corporation, including service in interstate  
 3 commerce, performed for wages or under any contract of hire,  
 4 written or oral, express or implied.

5 (A) For the purposes of this subsection any individual  
 6 who is a member of a crew furnished by a crew leader to  
 7 perform service in agricultural labor for any other person  
 8 shall be treated as an employee of such crew leader:

9 (1) if such crew leader holds a valid certificate of  
 10 registration under the Farm Labor Contractor Registration  
 11 Act of 1963, or substantially all the members of such crew  
 12 operate or maintain tractors, mechanized harvesting or  
 13 cropdusting equipment, or any other mechanized equipment,  
 14 which is provided by such crew leader; and

15 (2) if such individual is not an employee of such  
 16 other person within the meaning of (i)(1) of this section.

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

21 (1) such other person and not the crew leader shall be  
 22 treated as the employer of such individual; and

23 (2) such other person shall be treated as having paid  
 24 cash remuneration to such individual in an amount equal to  
 25 the amount of cash remuneration paid to such individual by

1 the crew leader (either on his own behalf or on behalf of  
 2 such other person) for the service in agricultural labor  
 3 performed for such other person.

4 (C) The term "crew leader" means an individual who:  
 5 (1) furnishes individuals to perform service in  
 6 agricultural labor for any other person;

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

10 (3) has not entered into a written agreement with such  
 11 other person under which such individual is designated as an  
 12 employee of such other person.

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

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

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

25 (3) Service not covered under paragraph (2) of this

1 subsection, and performed entirely without this state with  
 2 respect to no part of which contributions are required and  
 3 paid under an unemployment compensation law of any other  
 4 state or of the federal government, shall be deemed to be  
 5 employment subject to this act if the individual performing  
 6 such services is a resident of this state and the division  
 7 approves the election of the employing unit for whom such  
 8 services are performed that the entire service of such  
 9 individual shall be deemed to be employment subject to this  
 10 act.

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

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

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

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

24 (A) Such individual has been and will continue to be  
 25 free from control or direction over the performance of such

1 services, both under his contract and in fact; and

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

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

10 (6) The term "employment" shall include service  
11 performed after December 31, 1971, by an individual in the  
12 employ of this state or any of its instrumentalities (or in  
13 the employ of this state and one (1) or more other states or  
14 their instrumentalities) for a hospital or institution of  
15 higher education located in this state. Effective after July  
16 1, 1975, the term "employment" shall include service  
17 performed by all individuals including without limitations  
18 those individuals who work for the state of Montana, its  
19 university, any of its colleges, public schools, components  
20 or units thereof, or any local government unit, and one (1)  
21 or more other states or their instrumentalities or political  
22 subdivisions whose services are compensated by salary or  
23 wages. "Employment" shall not include elected public  
24 officials.

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, prior to December 31, 1977;  
18 or

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

1 rehabilitation or remunerative work; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (A) Agricultural labor; except as provided in  
23 (i)(1)(A) of this section. ~~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 of  
17 any commodity commonly known as agricultural commodities, or  
18 in connection with the hatching of poultry, or in connection  
19 with the operation or maintenance of ditches, canals,  
20 reservoirs, or waterways used exclusively for supplying and  
21 storing water for farming purposes, except where such  
22 ditches, canals, reservoirs, or waterways are owned and  
23 operated by government entities.

24 (4) In the employ of the operator of a farm or a group  
25 of operators of farms (or a co-operative organization of

1 which such operators are members) in handling, planting,  
2 drying, packing, packaging, processing, freezing, grading,  
3 storing, or delivering to storage or to market or to a  
4 carrier for transportation to market, in its unmanufactured  
5 state, any agricultural or horticultural commodity; but only  
6 if such operator or operators produced more than one-half  
7 (1/2) of the commodity with respect to which such service is  
8 performed.

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

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

23 (8) Domestic service in a private home, local college  
24 club or local chapter of a college fraternity or sorority;  
25 except as provided in (i)(1)(8) of this section.

1 (C) Service performed as an officer or member of the  
2 crew of a vessel on the navigable waters of the United  
3 States;

4 (D) Service performed by an individual in the employ  
5 of his son, daughter, or spouse, and service performed by a  
6 child under the age of eighteen (18) in the employ of his  
7 father or mother;

8 (E) Service performed in the employ of any other state  
9 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; provided that such service is excluded from  
16 "employment" as defined in the Federal Unemployment Tax Act  
17 by section 3306(c)(7) of that act.

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

16 (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 (J) Service performed by an individual under the age  
3 of twenty-two (22) who is enrolled at a nonprofit or public  
4 educational institution which normally maintains a regular  
5 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 (K) Service performed in the employ of a hospital, if  
16 such service is performed by a patient of the hospital.

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

24 (l) "Fund" means the unemployment compensation fund  
25 established by this act, to which all contributions and

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

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

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

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

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

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

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

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

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

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

-End-

STATE OF MONTANA

REQUEST NO. 124-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 20, 19 77, there is hereby submitted a Fiscal Note for House Bill 245 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:

An act to provide for unemployment insurance coverage of employees of certain agriculture, domestic, and non-profit employers as required by Public Law 94-566.

ASSUMPTIONS:

1. Administrative costs of the bill will be borne by the federal government.
2. Unemployment insurance taxes will be assessed on the first \$6,000 of wages paid to an employee during the calendar year.
3. Agriculture and domestic employers will pay the maximum (3.1%) contribution rate.
4. Non-profit employers, having the option of experience rating or reimbursable method of taxation, will choose the reimbursement option and contributions will equal benefits paid.
5. The extended benefit program will be in effect for 50% of all weeks in FY 78 and FY 79.
6. The federal government will reimburse state trust funds for benefits on increased coverage (agriculture, domestic, and non-profit schools) prior to July 1, 1978.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Additional tax contributions to Unemployment Insurance Trust Fund	\$141,680	\$727,470	\$869,150
Benefits paid	<u>0*</u>	<u>489,500</u>	<u>489,500</u>
Net increase to Unemployment Insurance Trust Fund	<u>\$141,680</u>	<u>\$237,970</u>	<u>\$379,650</u>

\*Benefits will be paid by federal government.

*Richard L. Young*  
 BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 Date: 1-26-77

Approved by Committee  
on Labor & Employment  
Relations

1 H BILL NO. 245  
2 INTRODUCED BY Lynch  
3 BY REQUEST OF THE DEPARTMENT OF LABOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
6 UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN  
7 AGRICULTURE, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED  
8 BY PUBLIC LAW 94-566 OF OCTOBER 20, 1975."

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

11 Section 1. Section 97-148, R.C.M. 1947, is amended to  
12 read as follows:

13 "87-148. Definitions. As used in this act, unless the  
14 context clearly requires otherwise:

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

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

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

1 United States, the base period shall be that applicable  
2 under the unemployment law of the paying state.

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

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

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

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

There are no changes in HB 45, & will not be re-run.

Please refer to white copy for complete text.

SECOND READING

HB 245

1           (h) "Employing unit" means any individual or type of  
 2 organization, including the state government, any of its  
 3 political subdivisions or instrumentalities, any  
 4 partnership, association, trust, estate, joint-stock  
 5 company, insurance company or corporation, whether domestic  
 6 or foreign, or the receiver, trustee in bankruptcy, trustee  
 7 or successor thereof, or the legal representative of a  
 8 deceased person, which has or subsequent to January 1, 1936,  
 9 had in its employ one (1) or more individuals performing  
 10 services for it within this state; except as provided under  
 11 (i)(1)(A) and (B) of this section; 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); except:

2           (A) Agricultural labor exempted under (j)(9) of this  
 3 section shall be considered employment subject to this act  
 4 effective January 1, 1978, whenever the employing unit pays  
 5 \$20,000 or more in cash to workers for agricultural labor in  
 6 any quarter in the current or preceding calendar year or  
 7 employs 10 or more workers in agricultural labor on 20 days  
 8 in 20 different weeks during the current or preceding  
 9 calendar year. If an employer is otherwise subject to the  
 10 act and has agricultural employment, all employees are  
 11 covered under the act regardless of the amount of moneys  
 12 expended for agricultural purposes.

13           (B) Domestic service exempted under (j)(9)(B) of this  
 14 section shall be considered employment subject to this act,  
 15 effective January 1, 1978, whenever the employing unit pays  
 16 \$1,000 or more in cash for domestic service in any quarter  
 17 during the current or preceding calendar year. If an  
 18 employer is otherwise subject to the act and has domestic  
 19 employment, all employees are covered under the act  
 20 regardless of the amount of moneys expended for domestic  
 21 purposes.

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

1 H BILL NO. 245  
2 INTRODUCED BY Lynch

3 BY REQUEST OF THE DEPARTMENT OF LABOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
6 UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN  
7 AGRICULTURE, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED  
8 BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976."

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

11 Section 1. Section 37-148, R.C.M. 1947, is amended to  
12 read as follows:

13 "87-148. Definitions. As used in this act, unless the  
14 context clearly requires otherwise:

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

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

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

1 United States, the base period shall be that applicable  
2 under the unemployment law of the paying state.

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

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

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

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

There are no changes in HB 245, and due to length will not  
be rerun. Please refer to yellow copy for complete text.

THIRD READING

HB 245

1 (h) "Employing unit" means any individual or type of  
 2 organization, including the state government, any of its  
 3 political subdivisions or instrumentalities, any  
 4 partnership, association, trust, estate, joint-stock  
 5 company, insurance company or corporation, whether domestic  
 6 or foreign, or the receiver, trustee in bankruptcy, trustee  
 7 or successor thereof, or the legal representative of a  
 8 deceased person, which has or subsequent to January 1, 1936,  
 9 had in its employ one (1) or more individuals performing  
 10 services for it within this state; except as provided under  
 11 (i)(1)(A) and (B) of this section; 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); except:

2 (A) Agricultural labor exempted under (j)(9) of this  
 3 section shall be considered employment subject to this act  
 4 effective January 1, 1978, whenever the employing unit pays  
 5 \$20,000 or more in cash to workers for agricultural labor in  
 6 any quarter in the current or preceding calendar year or  
 7 employs 10 or more workers in agricultural labor on 20 days  
 8 in 20 different weeks during the current or preceding  
 9 calendar year. If an employer is otherwise subject to the  
 10 act and has agricultural employment, all employees are  
 11 covered under the act regardless of the amount of moneys  
 12 expended for agricultural purposes.

13 (B) Domestic service exempted under (j)(9)(B) of this  
 14 section shall be considered employment subject to this act,  
 15 effective January 1, 1978, whenever the employing unit pays  
 16 \$1,000 or more in cash for domestic service in any quarter  
 17 during the current or preceding calendar year. If an  
 18 employer is otherwise subject to the act and has domestic  
 19 employment, all employees are covered under the act  
 20 regardless of the amount of moneys expended for domestic  
 21 purposes.

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

April 1, 1977

SENATE  
COMMITTEE OF THE WHOLE

That House Bill No. 245 be amended as follows:

1. Amend page 4, section 1, line 5.

Strike: "\$20,000"

Insert: "\$40,000"

2. Amend page 4, section 1, line 7.

Following: "employs"

Strike: "10"

Insert: "20"



1 HOUSE BILL NO. 245  
 2 INTRODUCED BY LYNCH  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 6 UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN  
 7 AGRICULTURE, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED  
 8 BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 87-148, R.C.M. 1947, is amended to  
 12 read as follows:  
 13 "87-148. Definitions. As used in this act, unless the  
 14 context clearly requires otherwise:  
 15 (a) "Annual payroll" means the total amount of wages  
 16 paid by an employer (regardless of the time of payment) for  
 17 employment during a calendar year.  
 18 (b) "Benefits" means the money payments payable to an  
 19 individual, as provided in this act, with respect to his  
 20 unemployment.  
 21 (c) "Base period" means the first four (4) of the last  
 22 five (5) completed calendar quarters immediately preceding  
 23 the first day of an individual's benefit year provided,  
 24 however, that in the case of a combined-wage claim pursuant  
 25 to the arrangement approved by the secretary of labor of the

1 United States, the base period shall be that applicable  
 2 under the unemployment law of the paying state.  
 3 (d) "Benefit year" with respect to any individual  
 4 means, the fifty-two (52) consecutive-week period beginning  
 5 with the first day of the calendar week in which such  
 6 individual files a valid claim, and thereafter the fifty-two  
 7 (52) consecutive-week period beginning with the first day of  
 8 the calendar week in which such individual files his next  
 9 valid claim after the termination of his last preceding  
 10 benefit year, provided that if such filing shall result in  
 11 an overlapping of benefit years the new benefit year shall  
 12 begin upon the first Sunday following the expiration of his  
 13 last preceding benefit year provided, however, that in the  
 14 case of a combined-wage claim pursuant to the arrangement  
 15 approved by the secretary of labor of the United States, the  
 16 base period shall be that applicable under the unemployment  
 17 law of the paying state.  
 18 (e) "Calendar quarter" means the period of three (3)  
 19 consecutive calendar months ending on March 31, June 30,  
 20 September 30, or December 31.  
 21 (f) "Division" means the employment security division  
 22 of the department of labor and industry provided for in  
 23 Title 82A, chapter 10, R.C.M. 1947.  
 24 (g) "Contributions" means the money payments to the  
 25 state unemployment compensation fund required by this act.

1 (h) "Employing unit" means any individual or type of  
 2 organization, including the state government, any of its  
 3 political subdivisions or instrumentalities, any  
 4 partnership, association, trust, estate, joint-stock  
 5 company, insurance company or corporation, whether domestic  
 6 or foreign, or the receiver, trustee in bankruptcy, trustee  
 7 or successor thereof, or the legal representative of a  
 8 deceased person, which has or subsequent to January 1, 1936,  
 9 had in its employ one (1) or more individuals performing  
 10 services for it within this state; except as provided under  
 11 (j)(1)(A) and (B) of this section; 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); except:

2 (A) Agricultural labor exempted under (j)(9) of this  
 3 section shall be considered employment subject to this act  
 4 effective January 1, 1978, whenever the employing unit pays  
 5 \$20,000 or more in cash to workers for agricultural labor in  
 6 any quarter in the current or preceding calendar year or  
 7 employs 10 or more workers in agricultural labor on 20 days  
 8 in 20 different weeks during the current or preceding  
 9 calendar year. If an employer is otherwise subject to the  
 10 act and has agricultural employment, all employees are  
 11 covered under the act regardless of the amount of moneys  
 12 expended for agricultural purposes.

13 (B) Domestic service exempted under (j)(9)(B) of this  
 14 section shall be considered employment subject to this act,  
 15 effective January 1, 1978, whenever the employing unit pays  
 16 \$1,000 or more in cash for domestic service in any quarter  
 17 during the current or preceding calendar year. If an  
 18 employer is otherwise subject to the act and has domestic  
 19 employment, all employees are covered under the act  
 20 regardless of the amount of moneys expended for domestic  
 21 purposes.

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

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

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

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

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

25 (j) (1) "Employment" subject to other provisions of

1 this subsection means service by an individual or by an  
 2 officer of a corporation, including service in interstate  
 3 commerce, performed for wages or under any contract of hire,  
 4 written or oral, express or implied.

5 ~~(A) For the purposes of this subsection any individual~~  
 6 ~~who is a member of a crew furnished by a crew leader to~~  
 7 ~~perform service in agricultural labor for any other person~~  
 8 ~~shall be treated as an employee of such crew leader:~~

9 ~~(1) if such crew leader holds a valid certificate of~~  
 10 ~~registration under the Farm Labor Contractor Registration~~  
 11 ~~Act of 1962, or substantially all the members of such crew~~  
 12 ~~operate or maintain tractors, mechanized harvesting or~~  
 13 ~~croppusting equipment, or any other mechanized equipment,~~  
 14 ~~which is provided by such crew leader; and~~

15 ~~(2) if such individual is not an employee of such~~  
 16 ~~other person within the meaning of (i)(1) of this section.~~

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

21 ~~(1) such other person and not the crew leader shall be~~  
 22 ~~treated as the employer of such individual; and~~

23 ~~(2) such other person shall be treated as having paid~~  
 24 ~~cash remuneration to such individual in an amount equal to~~  
 25 ~~the amount of cash remuneration paid to such individual by~~

1 ~~the crew leader (either on his own behalf or on behalf of~~  
2 ~~such other person) for the service in agricultural labor~~  
3 ~~performed for such other person.~~

4 ~~(C) The term "crew leader" means an individual who:~~  
5 ~~(1) furnishes individuals to perform service in~~  
6 ~~agricultural labor for any other person;~~

7 ~~(2) pays (either on his own behalf or on behalf of~~  
8 ~~such other person) the individuals so furnished by him for~~  
9 ~~the service in agricultural labor performed by them; and~~

10 ~~(3) has not entered into a written agreement with such~~  
11 ~~other person under which such individual is designated as an~~  
12 ~~employee of such other person.~~

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

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

25 (3) Service not covered under paragraph (2) of this

1 subsection, and performed entirely without this state with  
2 respect to no part of which contributions are required and  
3 paid under an unemployment compensation law of any other  
4 state or of the federal government, shall be deemed to be  
5 employment subject to this act if the individual performing  
6 such services is a resident of this state and the division  
7 approves the election of the employing unit for whom such  
8 services are performed that the entire service of such  
9 individual shall be deemed to be employment subject to this  
10 act.

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

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

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

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

24 (A) Such individual has been and will continue to be  
25 free from control or direction over the performance of such

1 services, both under his contract and in fact; and

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

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

10 (6) The term "employment" shall include service  
11 performed after December 31, 1971, by an individual in the  
12 employ of this state or any of its instrumentalities (or in  
13 the employ of this state and one (1) or more other states or  
14 their instrumentalities) for a hospital or institution of  
15 higher education located in this state. Effective after July  
16 1, 1975, the term "employment" shall include service  
17 performed by all individuals including without limitations  
18 those individuals who work for the state of Montana, its  
19 university, any of its colleges, public schools, components  
20 or units thereof, or any local government unit, and one (1)  
21 or more other states or their instrumentalities or political  
22 subdivisions whose services are compensated by salary or  
23 wages. "Employment" shall not include elected public  
24 officials.

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, prior to December 31, 1977;  
18 or

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

1 rehabilitation or remunerative work; or  
 2 (5) Services performed as part of an unemployment  
 3 work-relief or work-training program assisted or financed in  
 4 whole or in part by any a federal agency or any agency of a  
 5 state or political subdivision thereof, by an individual  
 6 receiving such work relief or work training; or  
 7 (6) Services performed for a ~~hospital~~ in a state  
 8 prison or other state correctional or custodial institution  
 9 by an inmate of the ~~prison or that~~ correctional institution.  
 10 (8) The term "employment" shall include the service of  
 11 an individual who is a citizen of the United States,  
 12 performed outside the United States (except in Canada ~~or the~~  
 13 ~~Virgin Islands~~), after December 31, 1971, in the employ of  
 14 an American employer (other than service which is deemed  
 15 "employment" under the provisions of subparagraphs (2) or  
 16 (4) of this subsection or the parallel provisions of another  
 17 state's law), if:  
 18 (A) The employer's principal place of business in the  
 19 United States is located in this state; or  
 20 (B) The employer has no place of business in the  
 21 United States, but  
 22 (1) The employer is an individual who is a resident of  
 23 this state; or  
 24 (2) The employer is a corporation which is organized  
 25 under the laws of this state; or

1 (3) The employer is a partnership or a trust and the  
 2 number of the partners or trustees who are residents of this  
 3 state is greater than the number who are residents of any  
 4 other state; or  
 5 (C) None of the criteria of divisions (A) and (B) of  
 6 this subparagraph is met but the employer has elected  
 7 coverage in this state or, the employer having failed to  
 8 elect coverage in any state, the individual has filed a  
 9 claim for benefits, based on such service, under the law of  
 10 this state.  
 11 (D) An "American employer," for purposes of this  
 12 paragraph, means a person who is:  
 13 (1) An individual who is a resident of the United  
 14 States; or  
 15 (2) A partnership if two-thirds (2/3) or more of the  
 16 partners are residents of the United States; or  
 17 (3) A trust, if all of the trustees are residents of  
 18 the United States; or  
 19 (4) A corporation organized under the laws of the  
 20 United States or of any state.  
 21 (9) The term "employment" shall not include:  
 22 (A) Agricultural labor; except as provided in  
 23 (1)(1)(A) of this section. ~~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 of  
17 any commodity commonly known as agricultural commodities, or  
18 in connection with the hatching of poultry, or in connection  
19 with the operation or maintenance of ditches, canals,  
20 reservoirs, or waterways used exclusively for supplying and  
21 storing water for farming purposes, except where such  
22 ditches, canals, reservoirs, or waterways are owned and  
23 operated by government entities.

24 (4) In the employ of the operator of a farm or a group  
25 of operators of farms (or a co-operative organization of

1 which such operators are members) in handling, planting,  
2 drying, packing, packaging, processing, freezing, grading,  
3 storing, or delivering to storage or to market or to a  
4 carrier for transportation to market, in its unmanufactured  
5 state, any agricultural or horticultural commodity; but only  
6 if such operator or operators produced more than one-half  
7 (1/2) of the commodity with respect to which such service is  
8 performed.

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

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

23 (B) Domestic service in a private home, local college  
24 club or local chapter of a college fraternity or sorority;  
25 except as provided in (i)(1)(B) of this section.

1 (C) Service performed as an officer or member of the  
 2 crew of a vessel on the navigable waters of the United  
 3 States;

4 (D) Service performed by an individual in the employ  
 5 of his son, daughter, or spouse, and service performed by a  
 6 child under the age of eighteen (18) in the employ of his  
 7 father or mother;

8 (E) Service performed in the employ of any other state  
 9 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; provided that such service is excluded from  
 16 "employment" as defined in the Federal Unemployment Tax Act  
 17 by section 3306(c)(7) of that act.

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

16 (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 (J) Service performed by an individual under the age  
3 of twenty-two (22) who is enrolled at a nonprofit or public  
4 educational institution which normally maintains a regular  
5 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 (K) Service performed in the employ of a hospital, if  
16 such service is performed by a patient of the hospital.

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

24 (l) "Fund" means the unemployment compensation fund  
25 established by this act, to which all contributions and

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

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

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

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

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

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

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

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

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

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

-End-

1 HOUSE BILL NO. 245  
 2 INTRODUCED BY LYNCH  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 6 UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN  
 7 AGRICULTURE, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED  
 8 BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976."  
 9

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

11 Section 1. Section 87-148, R.C.M. 1947, is amended to  
 12 read as follows:

13 "87-148. Definitions. As used in this act, unless the  
 14 context clearly requires otherwise:

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

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

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

1 United States, the base period shall be that applicable  
 2 under the unemployment law of the paying state.

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

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

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

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

1 (n) "Employing unit" means any individual or type of  
 2 organization, including the state government, any of its  
 3 political subdivisions or instrumentalities, any  
 4 partnership, association, trust, estate, joint-stock  
 5 company, insurance company or corporation, whether domestic  
 6 or foreign, or the receiver, trustee in bankruptcy, trustee  
 7 or successor thereof, or the legal representative of a  
 8 deceased person, which has or subsequent to January 1, 1936,  
 9 had in its employ one (1) or more individuals performing  
 10 services for it within this state; except as provided under  
 11 (i)(1)(A) and (B) of this section; 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); except:  
 2 (A) Agricultural labor exempted under (j)(9) of this  
 3 section shall be considered employment subject to this act  
 4 effective January 1, 1978, whenever the employing unit pays  
 5 ~~\$20,000~~ \$40,000 or more in cash to workers for agricultural  
 6 labor in any quarter in the current or preceding calendar  
 7 year or employs ~~at~~ 20 or more workers in agricultural labor  
 8 on 20 days in 20 different weeks during the current or  
 9 preceding calendar year. If an employer is otherwise  
 10 subject to the act and has agricultural employment, all  
 11 employees are covered under the act regardless of the amount  
 12 of moneys expended for agricultural purposes.

13 (B) Domestic service exempted under (j)(9)(B) of this  
 14 section shall be considered employment subject to this act,  
 15 effective January 1, 1978, whenever the employing unit pays  
 16 \$1,000 or more in cash for domestic service in any quarter  
 17 during the current or preceding calendar year. If an  
 18 employer is otherwise subject to the act and has domestic  
 19 employment, all employees are covered under the act  
 20 regardless of the amount of moneys expended for domestic  
 21 purposes.

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

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

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

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

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

25 (j) (1) "Employment" subject to other provisions of

1 this subsection means service by an individual or by an  
 2 officer of a corporation, including service in interstate  
 3 commerce, performed for wages or under any contract of hire,  
 4 written or oral, express or implied.

5 (A) For the purposes of this subsection any individual  
 6 who is a member of a crew furnished by a crew leader to  
 7 perform service in agricultural labor for any other person  
 8 shall be treated as an employee of such crew leader:

9 (1) if such crew leader holds a valid certificate of  
 10 registration under the Farm Labor Contractor Registration  
 11 Act of 1963, or substantially all the members of such crew  
 12 operate or maintain tractors, mechanized harvesting or  
 13 croppusting equipment, or any other mechanized equipment,  
 14 which is provided by such crew leader; and

15 (2) if such individual is not an employee of such  
 16 other person within the meaning of (i)(1) of this section.

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

21 (1) such other person and not the crew leader shall be  
 22 treated as the employer of such individual; and

23 (2) such other person shall be treated as having paid  
 24 cash remuneration to such individual in an amount equal to  
 25 the amount of cash remuneration paid to such individual by

1 the crew leader (either on his own behalf or on behalf of  
2 such other person) for the service in agricultural labor  
3 performed for such other person.

4 (C) The term "crew leader" means an individual who:

5 (1) furnishes individuals to perform service in  
6 agricultural labor for any other person;

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

10 (3) has not entered into a written agreement with such  
11 other person under which such individual is designated as an  
12 employee of such other person.

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

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

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

25 (3) Service not covered under paragraph (2) of this

1 subsection, and performed entirely without this state with  
2 respect to no part of which contributions are required and  
3 paid under an unemployment compensation law of any other  
4 state or of the federal government, shall be deemed to be  
5 employment subject to this act if the individual performing  
6 such services is a resident of this state and the division  
7 approves the election of the employing unit for whom such  
8 services are performed that the entire service of such  
9 individual shall be deemed to be employment subject to this  
10 act.

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

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

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

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

24 (A) Such individual has been and will continue to be  
25 free from control or direction over the performance of such

1 services, both under his contract and in fact; and

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

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

10 (6) The term "employment" shall include service  
11 performed after December 31, 1971, by an individual in the  
12 employ of this state or any of its instrumentalities (or in  
13 the employ of this state and one (1) or more other states or  
14 their instrumentalities) for a hospital or institution of  
15 higher education located in this state. Effective after July  
16 1, 1975, the term "employment" shall include service  
17 performed by all individuals including without limitations  
18 those individuals who work for the state of Montana, its  
19 university, any of its colleges, public schools, components  
20 or units thereof, or any local government unit, and one (1)  
21 or more other states or their instrumentalities or political  
22 subdivisions whose services are compensated by salary or  
23 wages. "Employment" shall not include elected public  
24 officials.

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, prior to December 31, 1971;  
18 or

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

1 rehabilitation or remunerative work; or  
 2 (5) Services performed as part of an unemployment  
 3 work-relief or work-training program assisted or financed in  
 4 whole or in part by any a federal agency or any agency of a  
 5 state or political subdivision thereof, by an individual  
 6 receiving such work relief or work training; or  
 7 (6) Services performed for a--hospital--in a state  
 8 prison or other state correctional or custodial institution  
 9 by an inmate of the-prison-or that correctional institution.  
 10 (8) The term "employment" shall include the service of  
 11 an individual who is a citizen of the United States,  
 12 performed outside the United States (except in Canada ~~or the~~  
 13 ~~Virgin-Islands~~), after December 31, 1971, in the employ of  
 14 an American employer (other than service which is deemed  
 15 "employment" under the provisions of subparagraphs (2) or  
 16 (4) of this subsection or the parallel provisions of another  
 17 state's law), if:  
 18 (A) The employer's principal place of business in the  
 19 United States is located in this state; or  
 20 (B) The employer has no place of business in the  
 21 United States, but  
 22 (1) The employer is an individual who is a resident of  
 23 this state; or  
 24 (2) The employer is a corporation which is organized  
 25 under the laws of this state; or

1 (3) The employer is a partnership or a trust and the  
 2 number of the partners or trustees who are residents of this  
 3 state is greater than the number who are residents of any  
 4 other state; or  
 5 (C) None of the criteria of divisions (A) and (B) of  
 6 this subparagraph is met but the employer has elected  
 7 coverage in this state or, the employer having failed to  
 8 elect coverage in any state, the individual has filed a  
 9 claim for benefits, based on such service, under the law of  
 10 this state.  
 11 (D) An "American employer," for purposes of this  
 12 paragraph, means a person who is:  
 13 (1) An individual who is a resident of the United  
 14 States; or  
 15 (2) A partnership if two-thirds (2/3) or more of the  
 16 partners are residents of the United States; or  
 17 (3) A trust, if all of the trustees are residents of  
 18 the United States; or  
 19 (4) A corporation organized under the laws of the  
 20 United States or of any state.  
 21 (9) The term "employment" shall not include:  
 22 (A) Agricultural labor; except as provided in  
 23 (1)(1)(A) of this section, the 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 of  
17 any commodity commonly known as agricultural commodities, or  
18 in connection with the hatching of poultry, or in connection  
19 with the operation or maintenance of ditches, canals,  
20 reservoirs, or waterways used exclusively for supplying and  
21 storing water for farming purposes, except where such  
22 ditches, canals, reservoirs, or waterways are owned and  
23 operated by government entities.

24 (4) In the employ of the operator of a farm or a group  
25 of operators of farms (or a co-operative organization of

1 which such operators are members) in handling, planting,  
2 drying, packing, packaging, processing, freezing, grading,  
3 storing, or delivering to storage or to market or to a  
4 carrier for transportation to market, in its unmanufactured  
5 state, any agricultural or horticultural commodity; but only  
6 if such operator or operators produced more than one-half  
7 (1/2) of the commodity with respect to which such service is  
8 performed.

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

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

23 (B) Domestic service in a private home, local college  
24 club or local chapter of a college fraternity or sorority;  
25 except as provided in (i)(1)(8) of this section.

1 (C) Service performed as an officer or member of the  
2 crew of a vessel on the navigable waters of the United  
3 States;

4 (D) Service performed by an individual in the employ  
5 of his son, daughter, or spouse, and service performed by a  
6 child under the age of eighteen (18) in the employ of his  
7 father or mother;

8 (E) Service performed in the employ of any other state  
9 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; provided that such service is excluded from  
16 "employment" as defined in the Federal Unemployment Tax Act  
17 by section 3306(c)(7) of that act.

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

16 (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 (J) Service performed by an individual under the age  
3 of twenty-two (22) who is enrolled at a nonprofit or public  
4 educational institution which normally maintains a regular  
5 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 (K) Service performed in the employ of a hospital, if  
16 such service is performed by a patient of the hospital.

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

24 (l) "Fund" means the unemployment compensation fund  
25 established by this act, to which all contributions and

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

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

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

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

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

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

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

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

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

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

-End-