

Senate BILL NO. 263

INTRODUCED BY *Lee*
BY REQUEST OF THE DEPARTMENT OF LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN AGRICULTURAL, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976; TO PROVIDE FOR A CHANGE IN THE ESTABLISHMENT OF A BENEFIT YEAR AND FURTHER DEFINE AN INDEPENDENT CONTRACTOR; AMENDING SECTION 87-148, R.C.M. 1947."

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

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

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

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

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

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

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

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, ~~and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. if the claim is filed Monday, Tuesday, or Wednesday of that week, if the claim is filed on Thursday or later, the benefit year is the 52 consecutive-week period beginning with the first day of the following calendar week. A new benefit year cannot be established during a current benefit year. However, an~~

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1 additional claim may be filed at any time during a benefit
 2 year to reopen the claim. The effective date of the
 3 additional claim shall be the first day of the calendar week
 4 in which such claim is filed if filed on Monday, Tuesday, or
 5 Wednesday of that week. If the claim is filed on Thursday
 6 or later, the additional claim shall be effective beginning
 7 with the first day of the following calendar week. However,
 8 in the case of a combined-wage claim pursuant to the
 9 arrangement approved by the secretary of labor of the United
 10 States, the benefit year shall be that applicable under the
 11 unemployment law of the paying state.

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

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

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

20 (h) "Employing unit" means any individual or type of
 21 organization, including the state government, any of its
 22 political subdivisions or instrumentalities, any
 23 partnership, association, trust, estate, joint-stock
 24 company, insurance company or corporation, whether domestic
 25 or foreign, or the receiver, trustee in bankruptcy, trustee

1 or successor thereof, or the legal representative of a
 2 deceased person, which has or subsequent to January 1, 1936,
 3 had in its employ one (1) or more individuals performing
 4 services for it within this state, except as provided under
 5 (i)(1)(A) and (8) of this section; and all individuals
 6 performing services within this state for any employing unit
 7 which maintains two (2) or more separate establishments
 8 within this state shall be deemed to be employed by a single
 9 employing unit for all the purposes of this act. Each
 10 individual employed to perform or assist in performing the
 11 work of any agent or employee of an employing unit shall be
 12 deemed to be employed by such employing unit for the
 13 purposes of this act, whether such individual was hired or
 14 paid directly by such employing unit or by such agent or
 15 employee, provided the employing unit has actual or
 16 constructive knowledge of the work.

17 (i) "Employer" means:

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

21 (A) Agricultural labor exempted under (j)(9) of this
 22 section shall be considered employment subject to this act
 23 effective January 1, 1978, whenever the employing unit pays
 24 \$20,000 or more in wages to workers for agricultural labor
 25 in any quarter in the current or preceding calendar year or

1 ~~employs 10 or more workers in agricultural labor on 20 days~~
 2 ~~in 20 different weeks during the current or preceding~~
 3 ~~calendar year;~~

4 ~~(1) If an employer is otherwise subject to the act and~~
 5 ~~has agricultural employment, all employees are covered under~~
 6 ~~the act regardless of the amount of moneys expended for~~
 7 ~~agricultural purposes.~~

8 ~~(B) Domestic service exempted under (j)(9)(B) of this~~
 9 ~~section shall be considered employment subject to this act,~~
 10 ~~effective January 1, 1978, whenever the employing unit pays~~
 11 ~~\$1,000 or more in wages for domestic service in any quarter~~
 12 ~~during the current or preceding calendar year.~~

13 ~~(1) If an employer is otherwise subject to the act and~~
 14 ~~has domestic employment, all employees are covered under the~~
 15 ~~act regardless of the amount of moneys expended for domestic~~
 16 ~~purposes.~~

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

21 (3) Any individual or employing unit which acquired
 22 the organization, trade, or business, or substantially all
 23 the assets thereof, of another employing unit (not an
 24 employer subject to this act), and which, if subsequent to
 25 such acquisition it were treated as a single unit with such

1 other employing unit would be an employer under paragraph
 2 (1) of this subsection;

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

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

17 (6) For the effective period of its election pursuant
 18 to section 37-110 (c) and (d) any other employing unit which
 19 has elected to become fully subject to this act.

20 (j) (1) "Employment" subject to other provisions of
 21 this subsection means service by an individual or by an
 22 officer of a corporation, including service in interstate
 23 commerce, performed for wages or under any contract of hire,
 24 written or oral, express or implied.

25 (2) The term "employment" shall include an

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1 individual's entire service, performed within or both within
2 and without this state if:

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

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

13 (2) if such individual is not an employee of such
14 other person within the meaning of (1)(I) of this section.

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

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

21 (2) such other person shall be treated as having paid
22 remuneration to such individual in an amount equal to the
23 amount of remuneration paid to such individual by the crew
24 leader (either on his own behalf or on behalf of such other
25 person) for the service in agricultural labor performed for

1 such other person.

2 (C) Term "crew leader" means an individual who:

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

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

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

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

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

20 (3) Service not covered under paragraph (2) of this
21 subsection, and performed entirely without this state with
22 respect to no part of which contributions are required and
23 paid under an unemployment compensation law of any other
24 state or of the federal government, shall be deemed to be
25 employment subject to this act if the individual performing

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

6 (4) Service shall be deemed to be localized within a
7 state if--

8 (A) The service is performed entirely within such
9 state; or

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

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

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

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

1 performed; and

2 (C) ~~Such individual is customarily engaged in an~~
3 ~~independently established trade, occupation, profession, or~~
4 ~~business. Such individual customarily is engaged in an~~
5 ~~independently established business of the same nature as~~
6 ~~that involved in the contract of service, or such individual~~
7 ~~holds himself out as a contractor and employs one or more~~
8 ~~individuals to assist in the actual performance of services.~~
9 ~~An individual who meets the following criteria shall be~~
10 ~~considered to have an independently established business:~~

11 (1) ~~The individual customarily has two or more~~
12 ~~effective contracts.~~

13 (2) ~~The individual as a normal business practice~~
14 ~~utilizes separate telephone service and business cards and~~
15 ~~engages in such commercial advertising as is customary in~~
16 ~~operating similar businesses.~~

17 (3) ~~The individual furnishes substantially all of the~~
18 ~~equipment, tools, and supplies necessary in carrying out his~~
19 ~~contractual obligations to his clients.~~

20 (6) The term "employment" shall include service
21 performed ~~after December 31, 1971,~~ by an individual in the
22 employ of this state or any of its instrumentalities (or in
23 the employ of this state and one (1) or more other states or
24 their instrumentalities) for a hospital or institution of
25 higher education located in this state. Effective after July

1 1, 1975, the term "employment" shall include service
 2 performed by all individuals including without limitations
 3 those individuals who work for the state of Montana, its
 4 university, any of its colleges, public schools, components
 5 or units thereof, or any local government unit, and one (1)
 6 or more other states or their instrumentalities or political
 7 subdivisions whose services are compensated by salary or
 8 wages. "Employment" shall not include elected public
 9 officials.

10 (7) The term "employment" shall include service
 11 performed ~~after December 31, 1971~~ by an individual in the
 12 employ of a religious, charitable, scientific, literary, or
 13 educational organization.

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

17 (1) In the employ of a church or convention or
 18 association of churches, or an organization which is
 19 operated primarily for religious purposes and which is
 20 operated, supervised, controlled, or principally supported
 21 by a church or convention or association of churches; or

22 (2) By a duly ordained, commissioned, or licensed
 23 minister of a church in the exercise of his ministry or by a
 24 member of a religious order in the exercise of duties
 25 required by such order; or

1 (3) In the employ of a school which is not an
 2 institution of higher education, prior to December 31, 1977;
 3 or

4 (4) In a facility conducted for the purpose of
 5 carrying out a program of rehabilitation for individuals
 6 whose earning capacity is impaired by age or physical or
 7 mental deficiency or injury or providing remunerative work
 8 for individuals who because of their impaired physical or
 9 mental capacity cannot be readily absorbed in the
 10 competitive labor market by an individual receiving such
 11 rehabilitation or remunerative work; or

12 (5) Services performed as part of an unemployment
 13 work-relief or work-training program assisted or financed in
 14 whole or in part by any federal agency or any agency of a
 15 state or political subdivision thereof, by an individual
 16 receiving such work relief or work training; or

17 (6) Services performed for ~~a hospital~~ in a state
 18 prison or other state correctional or custodial institution
 19 by an inmate of ~~the prison or that correctional~~ institution.

20 (8) The term "employment" shall include the service of
 21 an individual who is a citizen of the United States,
 22 performed outside the United States (except in Canada ~~or the~~
 23 ~~Virgin Islands~~), ~~after December 31, 1971~~ in the employ of
 24 an American employer (other than service which is deemed
 25 "employment" under the provisions of subparagraphs (2) or

1 (4) of this subsection or the parallel provisions of another
2 state's law), if:

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

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

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

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

11 (3) The employer is a partnership or a trust and the
12 number of the partners or trustees who are residents of this
13 state is greater than the number who are residents of any
14 other state; or

15 (C) None of the criteria of divisions (A) and (B) of
16 this subparagraph is met but the employer has elected
17 coverage in this state or, the employer having failed to
18 elect coverage in any state, the individual has filed a
19 claim for benefits, based on such service, under the law of
20 this state.

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

23 (1) An individual who is a resident of the United
24 States; or

25 (2) A partnership if two-thirds (2/3) or more of the

1 partners are residents of the United States; or

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

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

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

7 (A) Agricultural labor, ~~except as provided in~~
8 ~~(i)(1)(A) of this section. The term "agricultural labor"~~
9 ~~includes all services performed prior to January 1, 1972,~~
10 ~~which was agricultural labor as defined in this subparagraph~~
11 ~~prior to such date, and remunerated services performed after~~
12 ~~December 31, 1971.~~

13 (1) On a farm, in the employ of any person in
14 connection with cultivating the soil, or in connection with
15 raising or harvesting any agricultural or horticultural
16 commodity, including the raising, shearing, feeding, caring
17 for, training, and management of livestock, bees, poultry
18 and fur-bearing animals and wildlife.

19 (2) In the employ of the owner or tenant or other
20 operator of a farm, in connection with the operation,
21 management, conservation, improvement, or maintenance of
22 such farm and its tools and equipment, or in salvaging
23 timber or clearing land of brush and other debris left by a
24 hurricane, if the major part of such service is performed on
25 a farm.

1 (3) In connection with the production or harvesting of
 2 any commodity commonly known as agricultural commodities, or
 3 in connection with the hatching of poultry, or in connection
 4 with the operation or maintenance of ditches, canals,
 5 reservoirs, or waterways used exclusively for supplying and
 6 storing water for farming purposes, except where such
 7 ditches, canals, reservoirs, or waterways are owned and
 8 operated by government entities effective after December 31,
 9 1977.

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

20 (5) The provisions of paragraphs (1), (2), (3), and
 21 (4) shall not be deemed to be applicable with respect to
 22 service performed in connection with commercial canning or
 23 commercial freezing or in connection with any agricultural
 24 or horticultural commodity after its delivery to a terminal
 25 market for distribution for consumption; or on a farm

1 operated for profit if such service is not in the course of
 2 the employer's trade or business or is domestic service in a
 3 private home of the employer.

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

9 (B) Domestic service in a private home, local college
 10 club or local chapter of a college fraternity or sorority,
 11 except as provided in (1)(B) of this section effective
 12 after December 31, 1977.

13 (C) Service performed as an officer or member of the
 14 crew of a vessel on the navigable waters of the United
 15 States;

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

20 (E) Service performed in the employ of any other state
 21 or its political subdivisions, or of the United States
 22 government, or of an instrumentality of any other state or
 23 states or their political subdivisions or of the United
 24 States, except that national banks organized under the
 25 national banking law shall not be entitled to exemption

1 under this section and shall be subject to this act the same
 2 as state banks, ~~provided that such service is excluded from~~
 3 ~~"employment" as defined in the Federal Unemployment Tax Act~~
 4 ~~by section 3306(c)(7) of that act.~~

5 (F) Service with respect to which unemployment
 6 compensation is payable under an unemployment compensation
 7 system established by an act of Congress; provided, that the
 8 division is hereby authorized and directed to enter into
 9 agreements with the proper agencies under such act of
 10 Congress, which agreements shall become effective ten (10)
 11 days after publication thereof in the manner in section
 12 87-121 for general rules, to provide reciprocal treatment to
 13 individuals who have, after acquiring potential rights to
 14 benefits under this act, acquired rights to unemployment
 15 compensation under such act of Congress, or who have, after
 16 acquiring potential rights to unemployment compensation
 17 under such act of Congress, acquired rights to benefits
 18 under this act;

19 (G) Services performed in the delivery and
 20 distribution of newspapers or shopping news from house to
 21 house and business establishments by an individual under the
 22 age of eighteen (18) years, but not including the delivery
 23 or distribution to any point or points for subsequent
 24 delivery or distribution.

25 (H) Services performed by real estate, securities and

1 insurance salesmen paid solely by commissions and without
 2 guarantee of minimum earnings.

3 (I) Service performed, in the employ of a school,
 4 college, or university, if such service is performed by a
 5 student who is enrolled and is regularly attending classes
 6 at such school, college or university, or by the spouse of
 7 such a student, if such spouse is advised, at the time such
 8 spouse commences to perform such service, that the
 9 employment of such spouse to perform such service is
 10 provided under a program to provide financial assistance to
 11 such student by such school, college, or university, and
 12 such employment will not be covered by any program of
 13 unemployment insurance.

14 (J) Service performed by an individual under the age
 15 of twenty-two (22) who is enrolled at a nonprofit or public
 16 educational institution which normally maintains a regular
 17 faculty and curriculum and normally has a regularly
 18 organized body of students in attendance at the place where
 19 its educational activities are carried on as a student in a
 20 full-time program, taken for credit at such institution,
 21 which combines academic instruction with work experience, if
 22 such service is an integral part of such program, and such
 23 institution has so certified to the employer, except that
 24 this subparagraph shall not apply to service performed in a
 25 program established for or on behalf of an employer or group

1 of employers.

2 (K) Service performed in the employ of a hospital, if
3 such service is performed by a patient of the hospital.

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

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

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

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

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

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

25 (3) provides an educational program for which it

1 awards a bachelor's or higher degree, or provides a program
2 which is acceptable for full credit toward such a degree, a
3 program of post-graduate or post-doctoral studies, or a
4 program of training to prepare students for gainful
5 employment in a recognized occupation; and

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

7 (5) Notwithstanding any of the foregoing provisions of
8 this subsection, all colleges and universities in this state
9 are institutions of higher education for purposes of this
10 section.

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

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

-End-

STATE OF MONTANA

REQUEST NO. 252-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 1977, there is hereby submitted a Fiscal Note for Senate Bill 263 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 agricultural, domestic, and nonprofit employers as required by Public Law 94-566 of October 20, 1976; to provide for a change in the establishment of a benefit year and further define an independent contractor.

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.

Rushard L. Strong for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-1-77

Without recommendation
as Amended
Labor & Employment
Relations

SENATE BILL NO. 263

INTRODUCED BY LEE

BY REQUEST OF THE DEPARTMENT OF LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN AGRICULTURAL, DOMESTIC, AND NONPROFIT EMPLOYERS AS REQUIRED BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976; TO PROVIDE FOR A CHANGE IN THE ESTABLISHMENT OF A BENEFIT YEAR AND FURTHER DEFINE AN INDEPENDENT CONTRACTOR; AMENDING SECTION 87-148, R.C.M. 1947."

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

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

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

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

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

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

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

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim; ~~and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year; provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year; provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. if the claim is filed Monday, Tuesday, or Wednesday of that week, if the claim is filed on Thursday or later, the benefit year is the 52 consecutive-week period beginning with the first day of the following calendar week. A new benefit year cannot be established during a current benefit year. However, an~~

*The Changes on SB 263 are on
Page 9 - Refer To White Copy* SECOND READING

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

6 (4) Service shall be deemed to be localized within a
 7 state if--

8 (A) The service is performed entirely within such
 9 state; or

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

15 (5) Services performed by an individual for wages
 16 shall be deemed to be employment subject to this act
 17 IRRESPECTIVE OF WHETHER THE COMMON LAW RELATIONSHIP OF
 18 MASTER AND SERVANT EXISTS unless and until it is shown to
 19 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. Such individual customarily is engaged in an~~
 6 ~~independently established business of the same nature as~~
 7 ~~that involved in the contract of service, or such individual~~
 8 ~~holds himself out as a contractor and employs one or more~~
 9 ~~individuals to assist in the actual performance of services.~~

10 ~~An individual who meets the following criteria shall be~~
 11 ~~considered to have an independently established business:~~

12 ~~(1) The individual customarily has two or more~~
 13 ~~effective contracts.~~

14 ~~(2) The individual as a normal business practice~~
 15 ~~utilizes separate telephone service and business cards and~~
 16 ~~engages in such commercial advertising as is customary in~~
 17 ~~operating similar businesses.~~

18 ~~(3) The individual furnishes substantially all of the~~
 19 ~~equipment, tools, and supplies necessary in carrying out his~~
 20 ~~contractual obligations to his clients.~~

21 (6) The term "employment" shall include service
 22 performed ~~after December 31, 1971~~ by an individual in the
 23 employ of this state or any of its instrumentalities (or in
 24 the employ of this state and one (1) or more other states or
 25 their instrumentalities) for a hospital or institution of