

Senate Bill 313

In The Senate

January 28, 1981	Introduced and referred to Committee on Labor and Employment Relations.
February 3, 1981	Fiscal note requested.
February 11, 1981	Fiscal note returned.
February 19, 1981	Committee recommend bill do pass as amended.
February 20, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading no affirmative action taken.
February 14, 1981	Second reading indefinitely postponed.

1 *Spicer* BILL NO. *313* *Seating*  
 2 INTRODUCED BY *AKLESTAD* *McCallister* *Jensen*  
 3 *Hafferman* *Wolf* *Manuel* *Mark* *Thorn*  
 4 *Arthurdal*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE INDEPENDENT  
 6 BUSINESS ENTITIES WITHIN THE SECTION OF THE UNEMPLOYMENT  
 7 INSURANCE LAW THAT LISTS EXCLUSIONS FROM THE DEFINITION OF  
 8 EMPLOYMENT AND TO BROADEN THE QUALIFICATION STANDARDS FOR AN  
 9 INDEPENDENT BUSINESS ENTITY; AMENDING SECTIONS 39-51-201,  
 10 39-51-203, 39-51-204, 39-51-206, 39-51-2105, AND 39-51-2108,  
 11 MCA."

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

13 Section 1. Section 39-51-201, MCA, is amended to read:  
 14 "39-51-201. General definitions. As used in this  
 15 chapter, unless the context clearly requires otherwise, the  
 16 following definitions apply:

- 17 (1) The word "administrator" refers to a person  
 18 appointed by the commissioner of labor and industry to  
 19 direct and administer the unemployment insurance laws and  
 20 federal laws falling within the administrator's  
 21 jurisdiction.
- 22 (2) "Annual payroll" means the total amount of wages  
 23 paid by an employer, regardless of the time of payment, for  
 24 employment during a calendar year.
- 25 (3) "Annual total payroll" means the total of the 4

1 quarters of total payrolls of an employer preceding the  
 2 computation date as fixed herein.

3 (4) "Base period" means the first four of the last  
 4 five completed calendar quarters immediately preceding the  
 5 first day of an individual's benefit year. However, in the  
 6 case of a combined-wage claim pursuant to the arrangement  
 7 approved by the secretary of labor of the United States, the  
 8 base period shall be that applicable under the unemployment  
 9 law of the paying state.

10 (5) "Benefits" means the money payments payable to an  
 11 individual, as provided in this chapter, with respect to his  
 12 unemployment.

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

25 (7) "Board" means the board of labor appeals provided

1 for in Title 2, chapter 15, part 17.

2 (8) "Calendar quarter" means the period of 3  
3 consecutive calendar months ending on March 31, June 30,  
4 September 30, or December 31.

5 (9) "Contributions" means the money payments to the  
6 state unemployment insurance fund required by this chapter.

7 (10) "Division" means the employment security division  
8 of the department of labor and industry provided for in  
9 Title 2, chapter 15, part 17.

10 (11) "Employing unit" means any individual or  
11 organization, including the state government, any of its  
12 political subdivisions or instrumentalities, any  
13 partnership, association, trust, estate, joint-stock  
14 company, insurance company, or corporation, whether domestic  
15 or foreign, or the receiver, trustee in bankruptcy, trustee  
16 or successor thereof, or the legal representative of a  
17 deceased person which has or subsequent to January 1, 1936,  
18 had in its employ one or more individuals performing  
19 services for it within this state, except as provided under  
20 subsections ~~(8)~~ (7) and ~~(9)~~ (8) of 39-51-203. All  
21 individuals performing services within this state for any  
22 employing unit which maintains two or more separate  
23 establishments within this state are considered to be  
24 employed by a single employing unit for all the purposes of  
25 this chapter. Each individual employed to perform or assist

1 in performing the work of any agent or employee of an  
2 employing unit is deemed to be employed by such employing  
3 unit for the purposes of this chapter, whether such  
4 individual was hired or paid directly by such employing unit  
5 or by such agent or employee, provided the employing unit  
6 has actual or constructive knowledge of the work.

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

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

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

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

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

2 (16) (a) "Institution of higher education", for the  
3 purposes of this part, means an educational institution  
4 which:

5 (i) admits as regular students only individuals having  
6 a certificate of graduation from a high school or the  
7 recognized equivalent of such a certificate;

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

10 (iii) provides an educational program for which it  
11 awards a bachelor's or higher degree or provides a program  
12 which is acceptable for full credit toward such a degree, a  
13 program of postgraduate or postdoctoral studies, or a  
14 program of training to prepare students for gainful  
15 employment in a recognized occupation; and

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

17 (b) Notwithstanding any of the foregoing provisions of  
18 this subsection, all colleges and universities in this state  
19 are institutions of higher education for purposes of this  
20 part.

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

24 (18) "Unemployment insurance administration fund" means  
25 the unemployment insurance administration fund established

1 by this chapter from which administrative expenses under  
2 this chapter shall be paid.

3 (19) (a) "Wages" means all remuneration payable for  
4 personal services, including commissions and bonuses and the  
5 cash value of all remuneration payable in any medium other  
6 than cash. The reasonable cash value of remuneration  
7 payable in any medium other than cash shall be estimated and  
8 determined in accordance with rules prescribed by the  
9 division.

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

11 (i) the amount of any payment made to or on behalf of  
12 an employee by an employer on account of:

13 (A) retirement;

14 (B) sickness or accident disability;

15 (C) medical and hospitalization expenses in connection  
16 with sickness or accident disability; or

17 (D) death;

18 (ii) remuneration paid by any county welfare office  
19 from public assistance funds for services performed at the  
20 direction and request of such county welfare office.

21 (20) "Week" means a period of 7 consecutive calendar  
22 days ending at midnight on Saturday.

23 (21) An individual's "weekly benefit amount" means the  
24 amount of benefits he would be entitled to receive for 1  
25 week of total unemployment."

1 Section 2. Section 39-51-203, MCA, is amended to read:  
 2 "39-51-203. Employment defined. (1) "Employment",  
 3 subject to other provisions of this section, means service  
 4 by an individual or by an officer of a corporation,  
 5 including service in interstate commerce, performed for  
 6 wages or under any contract of hire, written or oral,  
 7 express or implied.

8 (2) (a) The term "employment" includes an individual's  
 9 entire service performed within or both within and without  
 10 this state if:

11 (i) the service is localized in this state; or

12 (ii) the service is not localized in any state but some  
 13 of the service is performed in this state and:

14 (A) the base of operations or, if there is no base of  
 15 operations, then the place from which such service is  
 16 directed or controlled, is in this state; or

17 (B) the base of operations or place from which such  
 18 service is directed or controlled is not in any state in  
 19 which some part of the service is performed, but the  
 20 individual's residence is in this state.

21 (b) Service is considered to be localized within a  
 22 state if:

23 (i) the service is performed entirely within such  
 24 state; or

25 (ii) the service is performed both within and without

1 such state, but the service performed without such state is  
 2 incidental to the individual's service within the state, for  
 3 example, is temporary or transitory in nature or consists of  
 4 isolated transactions.

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

16 ~~(4) Service performed by an individual for wages is~~  
 17 ~~considered to be employment subject to this chapter unless~~  
 18 ~~and until it is shown to the satisfaction of the division~~  
 19 ~~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;~~

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--customer--engaged--in--an~~  
4 ~~independently--established--trade--occupational--professional--or~~  
5 ~~business.~~

6 ~~(5)(4)~~ The term "employment" includes service  
7 performed after December 31, 1971, by an individual in the  
8 employ of this state or any of its instrumentalities (or in  
9 the employ of this state and one or more other states or  
10 their instrumentalities) for a hospital or institution of  
11 higher education located in this state. The term  
12 "employment" includes service performed after July 1, 1975,  
13 by all individuals, including without limitations those  
14 individuals who work for the state of Montana, its  
15 university, any of its colleges, public schools, components  
16 or units thereof, or any local government unit and one or  
17 more other states or their instrumentalities or political  
18 subdivisions whose services are compensated by salary or  
19 wages.

20 ~~(6)(5)~~ The term "employment" includes service  
21 performed after December 31, 1971, by an individual in the  
22 employ of a religious, charitable, scientific, literary, or  
23 educational organization.

24 ~~(7)(6)~~ (a) The term "employment" includes the service  
25 of an individual who is a citizen of the United States

1 performed outside the United States, except in Canada, after  
2 December 31, 1971, in the employ of an American employer,  
3 other than service which is considered employment under the  
4 provisions of subsection (2) of this section or the parallel  
5 provisions of another state's law, if:

6 (i) the employer's principal place of business in the  
7 United States is located in this state;

8 (ii) the employer has no place of business in the  
9 United States, but:

10 (A) the employer is an individual who is a resident of  
11 this state;

12 (B) the employer is a corporation which is organized  
13 under the laws of this state; or

14 (C) the employer is a partnership or a trust and the  
15 number of the partners or trustees who are residents of this  
16 state is greater than the number who are residents of any  
17 other state; or

18 (iii) none of the criteria of sections ~~(7)(6)(a)(i)~~ and  
19 ~~(7)(6)(a)(ii)~~ of this subsection are met but the employer  
20 has elected coverage in this state or, the employer having  
21 failed to elect coverage in any state, the individual has  
22 filed a claim for benefits based on such service under the  
23 law of this state.

24 (b) An "American employer", for purposes of this  
25 subsection, means a person who is:

1 (i) an individual who is a resident of the United  
2 States;

3 (ii) a partnership if two-thirds or more of the  
4 partners are residents of the United States;

5 (iii) a trust if all of the trustees are residents of  
6 the United States; or

7 (iv) a corporation organized under the laws of the  
8 United States or of any state.

9 ~~(b)(1)~~ Agricultural labor exempted under 39-51-204 is  
10 considered employment subject to this chapter effective  
11 January 1, 1978, whenever the employing unit pays \$20,000 or  
12 more in cash to workers for agricultural labor in any  
13 quarter in the current or preceding calendar year or employs  
14 10 or more workers in agricultural labor on 20 days in 20  
15 different weeks during the current or preceding calendar  
16 year. If an employer is otherwise subject to the chapter  
17 and has agricultural employment, all employees are covered  
18 under the chapter regardless of the amount of money  
19 expended for agricultural purposes.

20 ~~(b)(2)~~ Domestic service exempted under 39-51-204(1)(b)  
21 is considered employment subject to this chapter effective  
22 January 1, 1978, whenever the employing unit pays \$1,000 or  
23 more in cash for domestic service in any quarter during the  
24 current or preceding calendar year. If an employer is  
25 otherwise subject to the chapter and has domestic

1 employment, all employees are covered under the chapter  
2 regardless of the amount of money expended for domestic  
3 purposes."

4 Section 3. Section 39-51-204, MCA, is amended to read:  
5 "39-51-204. Exclusions from definition of employment.

6 (1) The term "employment" does not include:

7 (a) agricultural labor, except as provided in  
8 39-51-203~~(b)(1)~~;

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 39-51-203~~(b)(2)~~;

12 (c) service performed as an officer or member of the  
13 crew of a vessel on the navigable waters of the United  
14 States;

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

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

1 the same as state banks, provided that such service is  
 2 excluded from employment as defined in the Federal  
 3 Unemployment Tax Act by section 3306(c)(7) of that act;

4 (f) service with respect to which unemployment  
 5 insurance is payable under an unemployment insurance system  
 6 established by an act of congress, provided that the  
 7 division must enter into agreements with the proper agencies  
 8 under such act of congress, which agreements shall become  
 9 effective in the manner prescribed in the Montana  
 10 Administrative Procedure Act for the adoption of rules, to  
 11 provide reciprocal treatment to individuals who have, after  
 12 acquiring potential rights to benefits under this chapter,  
 13 acquired rights to unemployment insurance under such act of  
 14 congress or who have, after acquiring potential rights to  
 15 unemployment insurance under such act of congress, acquired  
 16 rights to benefits under this chapter;

17 (g) services performed in the delivery and  
 18 distribution of newspapers or shopping news from house to  
 19 house and business establishments by an individual under the  
 20 age of 18 years, but not including the delivery or  
 21 distribution to any point or points for subsequent delivery  
 22 or distribution;

23 (h) services performed by real estate, securities, and  
 24 insurance salesmen paid solely by commissions and without  
 25 guarantee of minimum earnings;

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

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

24 (k) service performed in the employ of a hospital if  
 25 such service is performed by a patient of the hospital;



1 (1) casual labor not in the course of an employer's  
2 trade or business performed in any calendar quarter, unless  
3 the cash remuneration paid for such service is \$50 or more  
4 and such service is performed by an individual who is  
5 regularly employed by such employer to perform such  
6 service;

7 (m) service performed after January 1, 1980 that is:

8 (i) provided by an individual, business, partnership,  
9 corporation, hereinafter called a "business entity", that by  
10 contract or in fact is free from control or direction over  
11 the performance of its service. For the purpose of  
12 subsection (1)(m)(i), the following do not constitute  
13 control or direction over the performance of the service:

14 (A) specification by the business for which the  
15 service is performed, either by written contract or orally,  
16 as to the nature of the service to be rendered or the work  
17 product to be produced; or

18 (B) retention of power by the business for which the  
19 service is performed to terminate at any time a contract for  
20 failure to adequately perform under the contract;

21 (iii) either outside the usual course of the business  
22 for which such service is performed or that is performed  
23 outside of all the places of business of the enterprise for  
24 which such service is performed; and

25 (iii) provided by a business entity that is engaged in

1 an independent trade, occupation, profession, or business  
2 irrespective of the capacity or financial capability of this  
3 business entity for a continued, independent existence.

4 (2) "Employment" does not include elected public  
5 officials.

6 (3) For the purposes of 39-51-203~~(6)~~(5), the term  
7 "employment" does not apply to service performed:

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

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

17 (c) in the employ of a school which is not an  
18 institution of higher education, prior to December 31, 1977;

19 (d) 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;

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

7 (f) for a state prison or other state correctional or  
8 custodial institution by an inmate of that institution."

9 Section 4. Section 39-51-206, MCA, is amended to read:

10 "39-51-206. Agricultural labor -- who treated as  
11 employer of member of a crew furnished by a crew leader. (1)  
12 For the purposes of 39-51-203, any individual who is a  
13 member of a crew furnished by a crew leader to perform  
14 service in agricultural labor for any other person shall be  
15 treated as an employee of such crew leader if:

16 (a) such crew leader holds a valid certificate of  
17 registration under the Farm Labor Contractor Registration  
18 Act of 1963 or substantially all the members of such crew  
19 operate or maintain tractors, mechanized harvesting or  
20 cropdusting equipment, or any other mechanized equipment  
21 which is provided by such crew leader; and

22 (b) such individual is not an employee of such other  
23 person within the meaning of 39-51-202(1), 39-51-203(1),  
24 or 39-51-203(9)(A).

25 (2) In the case of any individual who is furnished by

1 a crew leader to perform service in agricultural labor for  
2 any other person and who is not treated as an employee of  
3 such crew leader under subsection (1):

4 (a) such other person and not the crew leader shall be  
5 treated as the employer of such individual; and

6 (b) such other person shall be treated as having paid  
7 cash remuneration to such individual in an amount equal to  
8 the amount of cash remuneration paid to such individual by  
9 the crew leader, either on his own behalf or on behalf of  
10 such other person, for the service in agricultural labor  
11 performed for such other person.

12 (3) The term "crew leader" means an individual who:

13 (a) furnishes individuals to perform service in  
14 agricultural labor for any other person;

15 (b) pays, either on his own behalf or on behalf of  
16 such other person, the individuals so furnished by him for  
17 the service in agricultural labor performed by them; and

18 (c) has not entered into a written agreement with such  
19 other person under which such individual is designated as an  
20 employee of such other person."

21 Section 5. Section 39-51-2105, MCA, is amended to  
22 read:

23 "39-51-2105. Qualifying wages. (1) To qualify as an  
24 insured worker an individual must have been paid wages for  
25 insured work in the quarters of his base period an amount

1 totaling not less than 1 1/2 times his base period high  
2 quarter wages.

3 (2) On and after July 1, 1980, to qualify for  
4 benefits, an individual must have had at least 20 weeks of  
5 work with an average of \$50 per week in subject employment  
6 in the base period. To qualify for benefits, the total base  
7 period wages must be \$1,000 or more.

8 (3) With respect to weeks of unemployment beginning on  
9 or after January 1, 1978, wages for insured work shall  
10 include wages paid for previously uncovered services. For  
11 the purposes of this subsection, the term "previously  
12 uncovered services" means services:

13 (a) which were not employment as defined in  
14 39-51-204(1)(a) and (1)(b) at any time during the 1-year  
15 period ending December 31, 1975; and

16 (b) which:

17 (i) are agricultural labor, as defined in  
18 39-51-203~~(8)~~(7), or domestic service, as defined in  
19 39-51-203~~(9)~~(8); or

20 (ii) are services performed by an employee of this  
21 state or a political subdivision thereof, as provided in  
22 39-51-203~~(5)~~(4), or by an employee of a nonprofit  
23 educational institution which is not an institution of  
24 higher education, as provided in 39-51-203~~(6)~~(5), except to  
25 the extent that assistance under Title II of the Emergency

1 Jobs and Unemployment Assistance Act of 1974 was paid on the  
2 basis of such services."

3 Section 6. Section 39-51-2108, MCA, is amended to  
4 read:

5 "39-51-2108. Payment of benefits based on service in  
6 public, charitable, or educational organizations. Benefits  
7 based on service in employment defined in subsections ~~(4)~~  
8 ~~(4)~~ and ~~(6)~~ (5) of 39-51-203 and subsections (2) and (3) of  
9 39-51-204 are payable in the same amount, on the same terms,  
10 and subject to the same conditions as compensation payable  
11 on the basis of other service subject to this chapter,  
12 except that benefits based on service in an instructional,  
13 research, or principal administrative capacity for an  
14 educational institution may not be paid to an individual for  
15 any week of unemployment which begins during the period  
16 between 2 successive academic years or during a similar  
17 period between 2 regular terms, whether or not successive,  
18 or during a period of paid sabbatical leave provided for in  
19 the individual's contract if the individual has a contract  
20 to perform services in any such capacity for any such  
21 educational institution for both such academic years or both  
22 such terms."

-End-

## STATE OF MONTANA

REQUEST NO. 301-81

## FISCAL NOTE

Form BD-15

In compliance with a written request received 2/6, 19 81, there is hereby submitted a Fiscal Note for SB 313 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 PLACE INDEPENDENT BUSINESS ENTITIES WITHIN THE SECTION OF THE UNEMPLOYMENT INSURANCE LAW THAT LISTS EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT AND TO BROADEN THE QUALIFICATION STANDARDS FOR AN INDEPENDENT BUSINESS ENTITY . . ."

FISCAL IMPACT:

	<u>Existing Law</u>	<u>Under Proposed Law</u>
6-30-81 Trust Fund Balance	\$ 27,431,000	\$ 15,343,418
U.I. Benefits FY 1982	39,600,000	31,100,000
Contributions FY 1982	54,700,000	36,246,000
Trust Fund Balance 6-30-82	42,531,000	20,489,000
U.I. Benefits FY 1983	40,000,000	31,100,000
Contributions FY 1983	51,431,000	37,222,000
Trust Fund Balance 6-30-83	53,962,000	26,611,000

TAX SCHEDULE

CY 1981	SCHEDULE IX - 2.9% Average Rate	SCHEDULE IX - 2.9% Average Rate
CY 1982	SCHEDULE IX - 2.9% Average Rate	SCHEDULE X - 3.1% Average Rate
CY 1983	SCHEDULE VI - 2.3% Average Rate	SCHEDULE IX - 2.9% Average Rate

ADMINISTRATIVE COSTS  
OVER & ABOVE NORMAL  
OPERATING COSTS

FY 1982	Not Applicable	\$ 1,167,457
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BUDGET DIRECTOR

Office of Budget and Program Planning

Date: \_\_\_\_\_

## STATE OF MONTANA

REQUEST NO. (page 2) 301-81

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ASSUMPTIONS:

## 1. Contributions

- a. Assume percent of total and taxable wages, contributions, employment and employers in affected industries for FY 1980 can be applied to FY 1981.
- b. Assume 28% of affected employment would be union employment and not affected by SB 313.
- c. Assume these affected total wages would have increased by 14% each year.
  - (1) Therefore, assume loss in total wages of \$791 million for FY 1981
  - (2) \$901 million for FY 1982
  - (3) \$1028 million for FY 1983.
- d. Assume a decrease in percent of taxable to total wages under new provision
  - (1) Under existing law, percent of taxable to total wages = 55%
  - (2) Under new provision, assume taxable to total wages for FY 1981 would be 52.5%, for FY 1982 - 49% and for FY 1983 - 48%.
- e. Assume \$12,419,131 would be refunded to employers found to be independent contractors from January 1980 through December 1980.

## 2. Benefit Costs

- a. Assume percent of weeks claimed (i.e. one week of Unemployment Insurance benefits awarded to a claimant) of affected occupations taken from ES 203 Report (Characteristics of the Insured Unemployed) for FY 1980 can be applied to total weeks claimed for CY 1980.
- b. Assume 28% of these weeks claimed are union-employed individuals and, therefore, would be unaffected by SB 313.
- c. Assume FY 1980 average of \$74 per one week of benefits claimed will apply to CY 1980.
- d. Assume FY 1981 weeks claimed of 516,172.
- e. Assume 62% or \$6,775,421 of the \$10,928,098 of benefits overpaid in FY 1981 will actually be collected (based on current overpayment data).

## 3. Administrative Costs

- a. Automated Data Processing
  - (1) Assume 760 hours to correct current programs under new provisions.
  - (2) Assume combined programming, processing, systems analysis cost of \$24 per hour.
  - (3) Assume 160 hours of programming costs at \$10 per hour, 50 hours of cost per unit time-testing at \$38 per hour, quarterly maintenance costs of 20 programming hours and 5 cost per unit hours.

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: \_\_\_\_\_

STATE OF MONTANA

REQUEST NO. (page 3) 301-81

FISCAL NOTE

Form BD-15

In compliance with a written request received 2/6, 19 81, there is hereby submitted a Fiscal Note for SB 313 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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.

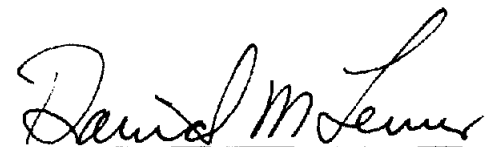
ASSUMPTIONS: (cont.)

b. Benefits

- (1) Assume recent study which calculated average cost to set up and collect overpayments can be applied to 15,930 projected overpayments. Assume cost of \$5.89 to set up each overpayment. Assume an average overpayment amount of \$686 per person. Assume an average of 6 payments per person to collect the overpayment at a cost of \$2.12 per payment.
- (2) Assume new monetary redeterminations will be processed for 15,930 claimants at a cost of \$1.10 per monetary redetermination (based on most recent, September 1979, time-use studies completed for Unemployment Insurance activities).

c. Contributions

- (1) Assume new status determination to be issued for 7,411 affected employers at average cost of \$8.48 per status (based on latest, first quarter 1981, time-use studies for Unemployment Insurance contributions).
- (2) Assume contribution adjustments to be made for 7,411 employers at an average cost of \$1.99 per adjustment.
- (3) Assume contribution refunds for 7,411 employers at average cost of \$1.13 per refund.
- (4) Assume 7,411 employer audits to be assigned at average cost of \$35.14 per audit.
- (5) Assume 7,411 tax appeals hearings at an average cost of \$65.06 per tax appeals hearing.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-81

Approved by Committee  
on Labor & Employment  
Relations

1 SENATE BILL NO. 313  
 2 INTRODUCED BY AKLFSTAD, McCALLUM, J. JOHNSON, KEATING,  
 3 HAFFERMAN, GALT, MANUEL, MARKS, MOORE, UNDERDAL  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE INDEPENDENT  
 6 BUSINESS ENTITIES WITHIN THE SECTION OF THE UNEMPLOYMENT  
 7 INSURANCE LAW THAT LISTS EXCLUSIONS FROM THE DEFINITION OF  
 8 EMPLOYMENT AND TO BROADEN THE QUALIFICATION STANDARDS FOR  
 9 AN INDEPENDENT BUSINESS ENTITY; AND TO REQUIRE COVERAGE  
 10 UNDER THE WORKERS' COMPENSATION ACT AND OTHER ACTS APPLYING  
 11 TO "INDEPENDENT CONTRACTORS"; AMENDING SECTIONS 39-51-201,  
 12 39-51-203, 39-51-204, 39-51-206, 39-51-2105, AND 39-51-2108,  
 13 MCA."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 39-51-201, MCA, is amended to read:  
17 "39-51-201. General definitions. As used in this  
18 chapter, unless the context clearly requires otherwise, the  
19 following definitions apply:

20 (1) The word "administrator" refers to a person  
21 appointed by the commissioner of labor and industry to  
22 direct and administer the unemployment insurance laws and  
23 federal laws falling within the administrator's  
24 jurisdiction.

25 (2) "Annual payroll" means the total amount of wages

1 paid by an employer, regardless of the time of payment, for  
2 employment during a calendar year.

3 (3) "Annual total payroll" means the total of the 4  
4 quarters of total payrolls of an employer preceding the  
5 computation date as fixed herein.

6 (4) "Base period" means the first four of the last  
7 five completed calendar quarters immediately preceding the  
8 first day of an individual's benefit year. However, in the  
9 case of a combined-wage claim pursuant to the arrangement  
10 approved by the secretary of labor of the United States, the  
11 base period shall be that applicable under the unemployment  
12 law of the paying state.

13 (5) "Benefits" means the money payments payable to an  
14 individual, as provided in this chapter, with respect to his  
15 unemployment.

16 (6) "Benefit year", with respect to any individual,  
17 means the 52 consecutive-week period beginning with the  
18 first day of the calendar week in which such individual  
19 files a valid claim for benefits, except that the benefit  
20 year shall be 53 weeks if filing a new valid claim would  
21 result in overlapping any quarter of the base year of a  
22 previously filed new claim. A subsequent benefit year may  
23 not be established until the expiration of the current  
24 benefit year. However, in the case of a combined-wage claim  
25 pursuant to the arrangement approved by the secretary of

1 labor of the United States, the base period is the period  
2 applicable under the unemployment law of the paying state.

3 (7) "Board" means the board of labor appeals provided  
4 for in Title 2, chapter 15, part 17.

5 (8) "Calendar quarter" means the period of 3  
6 consecutive calendar months ending on March 31, June 30,  
7 September 30, or December 31.

8 (9) "Contributions" means the money payments to the  
9 state unemployment insurance fund required by this chapter.

10 (10) "Division" means the employment security division  
11 of the department of labor and industry provided for in  
12 Title 2, chapter 15, part 17.

13 (11) "Employing unit" means any individual or  
14 organization, including the state government, any of its  
15 political subdivisions or instrumentalities, any  
16 partnership, association, trust, estate, joint-stock  
17 company, insurance company, or corporation, whether domestic  
18 or foreign, or the receiver, trustee in bankruptcy, trustee  
19 or successor thereof, or the legal representative of a  
20 deceased person which has or subsequent to January 1, 1936,  
21 had in its employ one or more individuals performing  
22 services for it within this state, except as provided under  
23 subsections ~~(8)~~ (7) and ~~(9)~~ (8) of 39-51-203. All  
24 individuals performing services within this state for any  
25 employing unit which maintains two or more separate

1 establishments within this state are considered to be  
2 employed by a single employing unit for all the purposes of  
3 this chapter. Each individual employed to perform or assist  
4 in performing the work of any agent or employee of an  
5 employing unit is deemed to be employed by such employing  
6 unit for the purposes of this chapter, whether such  
7 individual was hired or paid directly by such employing unit  
8 or by such agent or employee, provided the employing unit  
9 has actual or constructive knowledge of the work.

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

17 (13) "Fund" means the unemployment insurance fund  
18 established by this chapter to which all contributions and  
19 payments in lieu of contributions are required and from  
20 which all benefits provided under this chapter shall be  
21 paid.

22 (14) "Gross misconduct" means a criminal act, other  
23 than a violation of a motor vehicle traffic law, for which  
24 an individual has been convicted in a criminal court or has  
25 admitted or conduct which demonstrates a flagrant and wanton



1 disregard of and for the rights or title or interest of a  
2 fellow employee or his employer.

3 (15) "Hospital" means an institution which has been  
4 licensed, certified, or approved by the state as a hospital.

5 (16) (a) "Institution of higher education", for the  
6 purposes of this part, means an educational institution  
7 which:

8 (i) 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 (ii) is legally authorized in this state to provide a  
12 program of education beyond high school;

13 (iii) 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 postgraduate or postdoctoral studies, or a  
17 program of training to prepare students for gainful  
18 employment in a recognized occupation; and

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

20 (b) 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 part.

24 (17) "State" includes, in addition to the states of the  
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (18) "Unemployment insurance administration fund" means  
3 the unemployment insurance administration fund established  
4 by this chapter from which administrative expenses under  
5 this chapter shall be paid.

6 (19) (a) "Wages" means all remuneration payable for  
7 personal services, including commissions and bonuses and the  
8 cash value of all remuneration payable in any medium other  
9 than cash. The reasonable cash value of remuneration  
10 payable in any medium other than cash shall be estimated and  
11 determined in accordance with rules prescribed by the  
12 division.

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

14 (i) the amount of any payment made to or on behalf of  
15 an employee by an employer on account of:

16 (A) retirement;

17 (B) sickness or accident disability;

18 (C) medical and hospitalization expenses in connection  
19 with sickness or accident disability; or

20 (D) death;

21 (ii) remuneration paid by any county welfare office  
22 from public assistance funds for services performed at the  
23 direction and request of such county welfare office.

24 (20) "Week" means a period of 7 consecutive calendar  
25 days ending at midnight on Saturday.

1 (21) An individual's "weekly benefit amount" means the  
2 amount of benefits he would be entitled to receive for 1  
3 week of total unemployment."

4 Section 2. Section 39-51-203, MCA, is amended to read:  
5 "39-51-203. Employment defined. (1) "Employment",  
6 subject to other provisions of this section, means service  
7 by an individual or by an officer of a corporation,  
8 including service in interstate commerce, performed for  
9 wages or under any contract of hire, written or oral,  
10 express or implied.

11 (2) (a) The term "employment" includes an individual's  
12 entire service performed within or both within and without  
13 this state if:

14 (i) the service is localized in this state; or

15 (ii) the service is not localized in any state but some  
16 of the service is performed in this state and:

17 (A) the base of operations or, if there is no base of  
18 operations, then the place from which such service is  
19 directed or controlled, is in this state; or

20 (B) the base of operations or place from which such  
21 service is directed or controlled is not in any state in  
22 which some part of the service is performed, but the  
23 individual's residence is in this state.

24 (b) Service is considered to be localized within a  
25 state if:

1 (i) the service is performed entirely within such  
2 state; or

3 (ii) the service is performed both within and without  
4 such state, but the service performed without such state is  
5 incidental to the individual's service within the state, for  
6 example, is temporary or transitory in nature or consists of  
7 isolated transactions.

8 (3) Service not covered under subsection (2) of this  
9 section and performed entirely without this state with  
10 respect to no part of which contributions are required and  
11 paid under an unemployment insurance law of any other state  
12 or of the federal government is considered to be employment  
13 subject to this chapter if the individual performing such  
14 services is a resident of this state and the division  
15 approves the election of the employing unit for whom such  
16 services are performed that the entire service of such  
17 individual is considered to be employment subject to this  
18 chapter.

19 ~~(4) Service performed by an individual for wages is~~  
20 ~~considered to be employment subject to this chapter unless~~  
21 ~~and until it is shown to the satisfaction of the division~~  
22 ~~that:~~

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

~~{b} such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed and~~

~~{c} such individual is customarily engaged in an independently established trade, occupation, profession, or business.~~

{5}{4} The term "employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

{6}{5} The term "employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or

educational organization.

{7}{6} (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

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

(iii) none of the criteria of sections {7}{6}(a)(i) and {7}{6}(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the

1 law of this state.

2 (b) An "American employer", for purposes of this  
3 subsection, means a person who is:

4 (i) an individual who is a resident of the United  
5 States;

6 (ii) a partnership if two-thirds or more of the  
7 partners are residents of the United States;

8 (iii) a trust if all of the trustees are residents of  
9 the United States; or

10 (iv) a corporation organized under the laws of the  
11 United States or of any state.

12 ~~(8)~~(7) Agricultural labor exempted under 39-51-204 is  
13 considered employment subject to this chapter effective  
14 January 1, 1978, whenever the employing unit pays \$20,000 or  
15 more in cash to workers for agricultural labor in any  
16 quarter in the current or preceding calendar year or employs  
17 10 or more workers in agricultural labor on 20 days in 20  
18 different weeks during the current or preceding calendar  
19 year. If an employer is otherwise subject to the chapter  
20 and has agricultural employment, all employees are covered  
21 under the chapter regardless of the amount of money  
22 expended for agricultural purposes.

23 ~~(9)~~(8) Domestic service exempted under 39-51-204(1)(b)  
24 is considered employment subject to this chapter effective  
25 January 1, 1978, whenever the employing unit pays \$1,000 or

1 more in cash for domestic service in any quarter during the  
2 current or preceding calendar year. If an employer is  
3 otherwise subject to the chapter and has domestic  
4 employment, all employees are covered under the chapter  
5 regardless of the amount of money expended for domestic  
6 purposes."

7 Section 3. Section 39-51-204, MCA, is amended to read:  
8 "39-51-204. Exclusions from definition of employment.

9 (1) The term "employment" does not include:

10 (a) agricultural labor, except as provided in  
11 39-51-203~~(6)~~(7);

12 (b) domestic service in a private home, local college  
13 club, or local chapter of a college fraternity or sorority,  
14 except as provided in 39-51-203~~(9)~~(8);

15 (c) service performed as an officer or member of the  
16 crew of a vessel on the navigable waters of the United  
17 States;

18 (d) service performed by an individual in the employ  
19 of his son, daughter, or spouse and service performed by a  
20 child under the age of 18 in the employ of his father or  
21 mother;

22 (e) service performed in the employ of any other state  
23 or its political subdivisions or of the United States  
24 government or of an instrumentality of any other state or  
25 states or their political subdivisions or of the United

1 States, except that national banks organized under the  
 2 national banking law shall not be entitled to exemption  
 3 under this subsection and shall be subject to this chapter  
 4 the same as state banks, provided that such service is  
 5 excluded from employment as defined in the Federal  
 6 Unemployment Tax Act by section 3306(c)(7) of that act;

7 (f) service with respect to which unemployment  
 8 insurance is payable under an unemployment insurance system  
 9 established by an act of congress, provided that the  
 10 division must enter into agreements with the proper agencies  
 11 under such act of congress, which agreements shall become  
 12 effective in the manner prescribed in the Montana  
 13 Administrative Procedure Act for the adoption of rules, to  
 14 provide reciprocal treatment to individuals who have, after  
 15 acquiring potential rights to benefits under this chapter,  
 16 acquired rights to unemployment insurance under such act of  
 17 congress or who have, after acquiring potential rights to  
 18 unemployment insurance under such act of congress, acquired  
 19 rights to benefits under this chapter;

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

1 (h) services performed by real estate, securities, and  
 2 insurance salesmen paid solely by commissions and without  
 3 guarantee of minimum earnings;

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

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

1 or on behalf of an employer or group 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 (l) casual labor not in the course of an employer's  
5 trade or business performed in any calendar quarter, unless  
6 the cash remuneration paid for such service is \$50 or more  
7 and such service is performed by an individual who is  
8 regularly employed by such employer to perform such  
9 service;

10 (m) service performed after January 1, 1980 that is:

11 (i) provided by an individual, business, partnership,  
12 corporation, hereinafter called a "business entity", that by  
13 contract or in fact is free from control or direction over  
14 the performance of its service. For the purpose of  
15 subsection (l)(m)(i), the following do not constitute  
16 control or direction over the performance of the service:

17 (A) specification by the business for which the  
18 service is performed, either by written contract or orally,  
19 as to the nature of the service to be rendered or the work  
20 product to be produced; or

21 (B) retention of power by the business for which the  
22 service is performed to terminate at any time a contract for  
23 failure to adequately perform under the contract;

24 (ii) either outside the usual course of the business  
25 for which such service is performed or that is performed

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

3 (iii) provided by a business entity that is engaged in  
4 an independent trade, occupation, profession, or business  
5 irrespective of the capacity or financial capability of this  
6 business entity for a continued, independent existence.

7 (2) "Employment" does not include elected public  
8 officials.

9 (3) For the purposes of 39-51-203~~(6)~~(5), the term  
10 "employment" does not apply to service performed:

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

16 (b) by a duly ordained, commissioned, or licensed  
17 minister of a church in the exercise of his ministry or by a  
18 member of a religious order in the exercise of duties  
19 required by such order;

20 (c) in the employ of a school which is not an  
21 institution of higher education, prior to December 31, 1977;

22 (d) in a facility conducted for the purpose of  
23 carrying out a program of rehabilitation for individuals  
24 whose earning capacity is impaired by age or physical or  
25 mental deficiency or injury or providing remunerative work

1 for individuals who, because of their impaired physical or  
 2 mental capacity, cannot be readily absorbed in the  
 3 competitive labor market by an individual receiving such  
 4 rehabilitation or remunerative work;

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

10 (f) for a state prison or other state correctional or  
 11 custodial institution by an inmate of that institution."

12 Section 4. Section 39-51-206, MCA, is amended to read:

13 "39-51-206. Agricultural labor -- who treated as  
 14 employer of member of a crew furnished by a crew leader. (1)  
 15 For the purposes of 39-51-203, any individual who is a  
 16 member of a crew furnished by a crew leader to perform  
 17 service in agricultural labor for any other person shall be  
 18 treated as an employee of such crew leader if:

19 (a) such crew leader holds a valid certificate of  
 20 registration under the Farm Labor Contractor Registration  
 21 Act of 1963 or substantially all the members of such crew  
 22 operate or maintain tractors, mechanized harvesting or  
 23 cropdusting equipment, or any other mechanized equipment  
 24 which is provided by such crew leader; and

25 (b) such individual is not an employee of such other

1 person within the meaning of 39-51-202(1), 39-51-203~~(7)~~,  
 2 or 39-51-203~~(9)~~ (8).

3 (2) In the case of any individual who is furnished by  
 4 a crew leader to perform service in agricultural labor for  
 5 any other person and who is not treated as an employee of  
 6 such crew leader under subsection (1):

7 (a) such other person and not the crew leader shall be  
 8 treated as the employer of such individual; and

9 (b) such other person shall be treated as having paid  
 10 cash remuneration to such individual in an amount equal to  
 11 the amount of cash remuneration paid to such individual by  
 12 the crew leader, either on his own behalf or on behalf of  
 13 such other person, for the service in agricultural labor  
 14 performed for such other person.

15 (3) The term "crew leader" means an individual who:

16 (a) furnishes individuals to perform service in  
 17 agricultural labor for any other person;

18 (b) pays, either on his own behalf or on behalf of  
 19 such other person, the individuals so furnished by him for  
 20 the service in agricultural labor performed by them; and

21 (c) has not entered into a written agreement with such  
 22 other person under which such individual is designated as an  
 23 employee of such other person."

24 Section 5. Section 39-51-2105, MCA, is amended to  
 25 read:

1 "39-51-2105. Qualifying wages. (1) To qualify as an  
2 insured worker an individual must have been paid wages for  
3 insured work in the quarters of his base period an amount  
4 totaling not less than 1 1/2 times his base period high  
5 quarter wages.

6 (2) On and after July 1, 1980, to qualify for  
7 benefits, an individual must have had at least 20 weeks of  
8 work with an average of \$50 per week in subject employment  
9 in the base period. To qualify for benefits, the total base  
10 period wages must be \$1,000 or more.

11 (3) With respect to weeks of unemployment beginning on  
12 or after January 1, 1978, wages for insured work shall  
13 include wages paid for previously uncovered services. For  
14 the purposes of this subsection, the term "previously  
15 uncovered services" means services:

16 (a) which were not employment as defined in  
17 39-51-204(1)(a) and (1)(b) at any time during the 1-year  
18 period ending December 31, 1975; and

19 (b) which:

20 (i) are agricultural labor, as defined in  
21 39-51-203~~(6)~~(7), or domestic service, as defined in  
22 39-51-203~~(9)~~(8); or

23 (ii) are services performed by an employee of this  
24 state or a political subdivision thereof, as provided in  
25 39-51-203~~(5)~~(4), or by an employee of a nonprofit

1 educational institution which is not an institution of  
2 higher education, as provided in 39-51-203~~(6)~~(5), except to  
3 the extent that assistance under Title II of the Emergency  
4 Jobs and Unemployment Assistance Act of 1974 was paid on the  
5 basis of such services."

6 Section 6. Section 39-51-2108, MCA, is amended to  
7 read:

8 "39-51-2108. Payment of benefits based on service in  
9 public, charitable, or educational organizations. Benefits  
10 based on service in employment defined in subsections ~~(5)~~  
11 (4) and ~~(6)~~ (5) of 39-51-203 and subsections (2) and (3) of  
12 39-51-204 are payable in the same amount, on the same terms,  
13 and subject to the same conditions as compensation payable  
14 on the basis of other service subject to this chapter,  
15 except that benefits based on service in an instructional,  
16 research, or principal administrative capacity for an  
17 educational institution may not be paid to an individual for  
18 any week of unemployment which begins during the period  
19 between 2 successive academic years or during a similar  
20 period between 2 regular terms, whether or not successive,  
21 or during a period of paid sabbatical leave provided for in  
22 the individual's contract if the individual has a contract  
23 to perform services in any such capacity for any such  
24 educational institution for both such academic years or both  
25 such terms."



1       SECTION 7. APPLICABILITY AND COVERAGE OF OTHER ACTS.  
2       (1) A BUSINESS ENTITY AS PROVIDED IN [SECTION 3] IS AN  
3       "INDEPENDENT CONTRACTOR" FOR PURPOSES OF THE WORKERS'  
4       COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT.  
5       (2) ANY CONTRACT BETWEEN A BUSINESS ENTITY AND THE  
6       BUSINESS FOR WHICH SERVICES OF THE BUSINESS ENTITY ARE BEING  
7       PERFORMED SHALL CONTAIN A PROVISION THAT THE BUSINESS ENTITY  
8       HAS OBTAINED FOR ITSELF AND FOR ITS EMPLOYEES, WHERE  
9       APPLICABLE, COVERAGE UNDER THE WORKERS' COMPENSATION ACT AND  
10       THE OCCUPATIONAL DISEASE ACT FOR THE DURATION OF THE  
11       CONTRACT.

-End-