

HOUSE BILL NO. 90

1/07 Introduced
1/07 Referred to Business & Labor
1/10 Hearing
1/16 Fiscal Note Requested
1/21 Fiscal Note Received
Died in Committee

1 HOUSE BILL NO. 90
2 INTRODUCED BY HARBIN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CORPORATION
5 OFFICERS, SOLE PROPRIETORS, AND WORKING PARTNERS FROM THE
6 DEFINITION OF "EMPLOYMENT" IN THE UNEMPLOYMENT INSURANCE
7 LAW; AMENDING SECTIONS 39-51-203 AND 39-51-204, MCA."

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

10 Section 1. Section 39-51-203, MCA, is amended to read:

11 "39-51-203. Employment defined. (1) "Employment",
12 subject to other provisions of this section, means service
13 by an individual ~~or--by--an--officer--of--a--corporation,~~
14 including service in interstate commerce, performed for
15 wages or under any contract of hire, written or oral,
16 express or implied.

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

- 20 (i) the service is localized in this state; or
- 21 (ii) the service is not localized in any state but some
22 of the service is performed in this state and:

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

1 (B) the base of operations or place from which such
2 service is directed or controlled is not in any state in
3 which some part of the service is performed, but the
4 individual's residence is in this state.

5 (b) Service is considered to be localized within a
6 state if:

7 (i) the service is performed entirely within such
8 state; or

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

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

25 (4) Service performed by an individual for wages is



1 considered to be employment subject to this chapter unless
2 and until it is shown to the satisfaction of the department
3 that:

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

7 (b) such service is either outside the usual course of
8 the business for which such service is performed or that
9 such service is performed outside of all the places of
10 business of the enterprise for which such service is
11 performed; and

12 (c) such individual is customarily engaged in an
13 independently established trade, occupation, profession, or
14 business.

15 (5) The term "employment" includes service performed
16 after December 31, 1971, by an individual in the employ of
17 this state or any of its instrumentalities (or in the employ
18 of this state and one or more other states or their
19 instrumentalities) for a hospital or institution of higher
20 education located in this state. The term "employment"
21 includes service performed after July 1, 1975, by all
22 individuals, including without limitations those individuals
23 who work for the state of Montana, its university, any of
24 its colleges, public schools, components or units thereof,
25 or any local government unit and one or more other states or

1 their instrumentalities or political subdivisions whose
2 services are compensated by salary or wages.

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

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

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

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

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

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

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

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

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

9 (i) an individual who is a resident of the United
 10 States;

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

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

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

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

1 under the chapter regardless of the amount of money
 2 expended for agricultural purposes.

3 (9) Domestic service exempted under 39-51-204(1)(b) is
 4 considered employment subject to this chapter effective
 5 January 1, 1978, whenever the employing unit pays \$1,000 or
 6 more in cash for domestic service in any quarter during the
 7 current or preceding calendar year. If an employer is
 8 otherwise subject to the chapter and has domestic
 9 employment, all employees are covered under the chapter
 10 regardless of the amount of money expended for domestic
 11 purposes."

12 Section 2. Section 39-51-204, MCA, is amended to read:

13 "39-51-204. Exclusions from definition of employment.

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

15 (a) agricultural labor, except as provided in
 16 39-51-203(8);

17 (b) domestic service in a private home, local college
 18 club, or local chapter of a college fraternity or sorority,
 19 except as provided in 39-51-203(9);

20 (c) service performed as an officer or member of the
 21 crew of a vessel on the navigable waters of the United
 22 States;

23 (d) service performed by an individual in the employ
 24 of his son, daughter, or spouse and service performed by a
 25 child under the age of 21 in the employ of his father or

1 mother;

2 (e) service performed in the employ of any other state
3 or its political subdivisions or of the United States
4 government or of an instrumentality of any other state or
5 states or their political subdivisions or of the United
6 States, except that national banks organized under the
7 national banking law shall not be entitled to exemption
8 under this subsection and shall be subject to this chapter
9 the same as state banks, provided that such service is
10 excluded from employment as defined in the Federal
11 Unemployment Tax Act by section 3306(c)(7) of that act;

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

25 (g) services performed in the delivery and

1 distribution of newspapers or shopping news from house to
2 house and business establishments by an individual under the
3 age of 18 years, but not including the delivery or
4 distribution to any point or points for subsequent delivery
5 or distribution;

6 (h) services performed by real estate, securities, and
7 insurance salesmen paid solely by commissions and without
8 guarantee of minimum earnings;

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

20 (j) service performed by an individual under the age
21 of 22 who is enrolled at a nonprofit or public educational
22 institution, which normally maintains a regular faculty and
23 curriculum and normally has a regularly organized body of
24 students in attendance at the place where its educational
25 activities are carried on, as a student in a full-time

1 program taken for credit at such institution which combines
 2 academic instruction with work experience if such service is
 3 an integral part of such program and such institution has so
 4 certified to the employer, except that this subsection shall
 5 not apply to service performed in a program established for
 6 or on behalf of an employer or group of employers;

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

9 (l) casual labor not in the course of an employer's
 10 trade or business performed in any calendar quarter, unless
 11 the cash remuneration paid for such service is \$50 or more
 12 and such service is performed by an individual who is
 13 regularly employed by such employer to perform such service.

14 (2) "Employment" does not include elected public
 15 officials.

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

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

23 (b) by a duly ordained, commissioned, or licensed
 24 minister of a church in the exercise of his ministry or by a
 25 member of a religious order in the exercise of duties

1 required by such order;

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

4 (d) 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;

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

17 (f) for a state prison or other state correctional or
 18 custodial institution by an inmate of that institution.

19 (4) "Employment" does not include services performed
 20 as a sole proprietor, a working member of a partnership, or
 21 an officer of a corporation."

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 111-85

Form BD-15

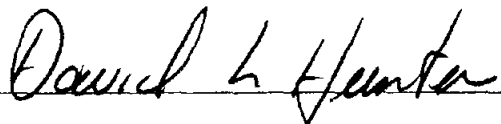
In compliance with a written request received January 16, 19 85, there is hereby submitted a Fiscal Note for H.B. 90 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

To exclude corporation officers, sole proprietors, and working partners from the definition of "Employment" in the Unemployment Insurance Law.

ASSUMPTIONS:

1. Unemployment Insurance Contribution receipts previously projected by the Department of Labor & Industry will be \$62,200,000 in FY 86 and \$65,100,000 in FY 87. Unemployment Insurance Benefit payments previously projected by the Department of Labor & Industry will be \$67,000,000 in FY 86 and \$73,000,000 in FY 87.
2. Estimate that 9500 corporations are covered employers for Unemployment Insurance.
3. Estimate an average of 3 corporate officers' wages/corporation would be affected by the proposed law.
4. The average taxable wage base is estimated to be \$8700 in FY 86 and \$8900 in FY 87.
5. The average tax rate will be 3.1% in FY 86 and 3.1% in FY 87. (.1% Administrative Tax is included)
6. Estimate that 7% of all corporate officers covered by Unemployment Insurance will draw some benefits each year.
7. Estimate the Average Weekly Benefit Amount to be \$134 in FY 86 and \$142 in FY 87, and the Average Duration of Unemployment to be 13 weeks.


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 18, 1985

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FISCAL IMPACT:

On State Special Revenues:

	<u>FY 86</u>	<u>FY 87</u>
Current Law Contributions	\$62,200,000	\$65,100,000
Proposed Law Net Reduction	<u>\$54,520,000</u> (\$ 7,680,000)	<u>\$57,240,000</u> (\$ 7,860,000)
Current Law Benefits	\$67,000,000	\$73,000,000
Proposed Law Net Reduction	<u>\$63,525,000</u> (\$ 3,475,000)	<u>\$69,317,000</u> (\$ 3,683,000)
Net Effect on Trust Fund (State Special Revenue)	(\$ 4,205,000)	(\$ 4,177,000)