HOUSE BILL NO. 428

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INTRODUCED BY MILES

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Business and Labor.
January 24, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 5, 1985	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 6, 1985	Bill printed and placed on members' desks.
February 8, 1985	Second reading, do pass.
February 9, 1985	Considered correctly engrossed.
February 11, 1985	Third reading, passed.
	Transmitted to Senate.
IN THE S	ENATE
February 12, 1985	Introduced and referred to Committee on Labor and Employment Relations.
March 7, 1985	Committee recommend bill be concurred in. Report adopted.

March 8, 1985 March 11, 1985 March 11, 1985 Second reading, concurred in. Ayes, 50; Noes, 0. Returned to House.

IN THE HOUSE

March 12, 1985

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Received from Senate. Sent to enrolling. Reported correctly enrolled.

HOUSE BILL NO. 428 1 INTRODUCED BY Miles 2 BY REQUEST OF THE DEPARTMENT 3 OF LABOR AND INDUSTRY 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 UNEMPLOYMENT INSURANCE LAW; AMENDING SECTIONS 39-51-201, 7 39-51-204, 39-51-301, 39-51-302, 39-51-304, 8 39-51-202, 39-51-305, 39-51-402, 39-51-1103, 39-51-1109, 39-51-1305, 9 39-51-2104, 39-51-2307, AND 39-51-2410, MCA; AND PROVIDING 10 AN IMMEDIATE EFFECTIVE DATE." 11 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 17 following definitions apply: +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----lawa----falling----within---the---administrator's 21 22 jurisdiction-(2)(1) "Annual payroll" means the total amount of 23 wages paid by an employer, regardless of the time of 24 payment, for employment during a calendar year. 25

Montana Legislative Council

1 (3)--"Annual-total-payroll"-means-the-total-of-the-four
2 guarters-of-total-payrolls--of--an--employer--preceding--the
3 computation-date-as-fixed-herein-

+4+(2) "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 8 approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment 9 10 law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary 11 12 total disability as defined in 39-71-116 or a similar 13 statute of another state or the United States, the base period means the first four quarters of the last five 14 quarters preceding the disability if a claim for 15 16 unemployment benefits is filed within 18 months of the 17 individual's last employment.

18 (57(3) "Benefits" means the money payments payable to 19 an individual, as provided in this chapter, with respect to 20 his unemployment.

21 (6)(4) "Benefit year", with respect to any individual, 22 means the 52 consecutive-week period beginning with the 23 first day of the calendar week in which such individual 24 files a valid claim for benefits, except that the benefit 25 year shall be 53 weeks if filing a new valid claim would INTRODUCED BILL

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result in overlapping any quarter of the base year of a 1 2 previously filed new claim. A subsequent benefit year may not be established until the expiration of the current 3 benefit year. However, in the case of a combined-wage claim 4 pursuant to the arrangement approved by the secretary of 5 labor of the United States, the base period is the period 6 applicable under the unemployment law of the paying state. 7 (7)(5) "Board" means the board of labor appeals 8 9 provided for in Title 2, chapter 15, part 17.

10 (8)(6) "Calendar quarter" means the period of 3
11 consecutive calendar months ending on March 31, June 30,
12 September 30, or December 31.

13 (9)(7) "Contributions" means the money payments to the
14 state unemployment insurance fund required by this chapter.
15 (10)(8) "Department" means the department of labor and
16 industry provided for in Title 2, chapter 15, part 17.

(11)(9) "Employing unit" means any individual or 17 organization, including the state government, any of its 18 instrumentalities, political subdivisions or 19 any 20 partnership, association, trust, estate, joint-stock 21 company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee 22 or successor thereof, or the legal representative of a 23 deceased person which has or subsequent to January 1, 1936, 24 had in its employ one or more individuals performing 25

services for it within this state, except as provided under 1 2 subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit 3 which maintains two or more separate establishments within 4 this state are considered to be employed by a single 5 employing unit for all the purposes of this chapter. Each 6 individual employed to perform or assist in performing the 7 8 work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of 9 this chapter, whether such individual was hired or paid 10 11 directly by such employing unit or by such agent or employee, provided the employing unit has actual or 12 constructive knowledge of the work. 13

14 (12)(10) "Employment office" means a free public 15 employment office or branch thereof operated by this state 16 or maintained as a part of a state-controlled system of 17 public employment offices or such other free public 18 employment offices operated and maintained by the United 19 States government or its instrumentalities as the department 20 may approve.

21 (±3)(11) "Fund" means the unemployment insurance fund 22 established by this chapter to which all contributions and 23 payments in lieu of contributions are required and from 24 which all benefits provided under this chapter shall be 25 paid.

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1 (14)(12) "Gross misconduct" means a criminal act, other 2 than a violation of a motor vehicle traffic law, for which 3 an individual has been convicted in a criminal court or has 4 admitted or conduct which demonstrates a flagrant and wanton 5 disregard of and for the rights or title or interest of a 6 fellow employee or his employer.

7 (15)(13) "Hospital" means an institution which has been 8 licensed, certified, or approved by the state as a hospital. 9 (16)(14) (a) "Institution of higher education", for the 10 purposes of this part, means an educational institution 11 which:

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

15 (ii) is legally authorized in this state to provide a 16 program of education beyond high school;

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

23 (iv) is a public or other nonprofit institution.
24 (b) Notwithstanding any of the foregoing provisions of

(b) Notwithstanding any of the foregoing provisions ofthis subsection, all colleges and universities in this state

are institutions of higher education for purposes of this
 part.

3 (17)(15) "State" includes, in addition to the states of
4 the United States of America, the District of Columbia,
5 Puerto Rico, the Virgin Islands, and the Dominion of Canada.
6 (18)(16) "Unemployment insurance administration fund"
7 means the unemployment insurance administration fund
8 established by this chapter from which administrative
9 expenses under this chapter shall be paid.

10 (19)(17) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, and 11 the cash value of all remuneration payable in any medium 12 other than cash, and backpay received pursuant to a dispute 13 14 related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be 15 estimated and determined in accordance with rules prescribed 16 by the department. 17

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

19 (i) the amount of any payment made to or on behalf of

- 20 an employee by an employer on account of:
- 21 (A) retirement;
- 22 (B) sickness or accident disability;
- 23 (C) medical and hospitalization expenses in connection
- 24 with sickness or accident disability; or
- 25 (D) death;

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

4 (20)(18) "Week" means a period of 7 consecutive
5 calendar days ending at midnight on Saturday.

6 (21)(19) An individual's "weekly benefit amount" means
7 the amount of benefits he would be entitled to receive for 1
8 week of total unemployment."

9 Section 2. Section 39-51-202, MCA, is amended to read:
10 "39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll
 within either the current or preceding calendar year exceeds
 the sum of \$500 \$1,500;

14 (2) any individual or employing unit which acquired
15 the organization, trade, or business or substantially all of
16 the assets thereof of another which at the time of such
17 acquisition was an employer subject to this chapter;

18 (3) any individual or employing unit which acquired 19 the organization, trade, or business or substantially all 20 the assets thereof of another employing unit not an employer 21 subject to this chapter and which, if subsequent to such 22 acquisition it were treated as a single unit with such other 23 employing unit, would be an employer under subsection (1) of 24 this section;

25 (4) any employing unit not an employer by reason of

any other subsection of this section for which, within 1 2 either the current or preceding calendar year, service is or was performed with respect to which such employing unit is з liable for any federal tax against which credit may be 4 taken for contributions paid into a state unemployment fund 5 6 or an employing unit which, as a condition for approval of 7 this chapter for full tax credit against the tax imposed by 8 the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter; 9

10 (5) any employing unit which, having become an 11 employer under subsection (1), (2), (3), or (4) has not, 12 under 39-51-1101, ceased to be an employer subject to this 13 chapter; or

14 (6) for the effective period of its election pursuant
15 to 39-51-1102, any other employing unit which has elected to
16 become fully subject to this chapter."

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

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

20 (a) agricultural labor, except as provided in 21 39-51-203(8);

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

25 (c) service performed as an officer or member of the

crew of a vessel on the navigable waters of the United
 States;

3 (d) service performed by an individual in the employ
4 of his son, daughter, or spouse and service performed by a
5 child under the age of 21 in the employ of his father or
6 mother;

(e) service performed in the employ of any other state 7 or its political subdivisions or of the United States 8 government or of an instrumentality of any other state or 9 states or their political subdivisions or of the United 10 States, except that national banks organized under the 11 national banking law shall not be entitled to exemption 12 under this subsection and shall be subject to this chapter 13 the same as state banks, provided that such service is 14 excluded from employment as defined in the Federal 15 Unemployment Tax Act by section 3306(c)(7) of that act; 16

(f) service with respect to which unemployment 17 insurance is payable under an unemployment insurance system 18 established by an act of congress, provided that the 19 department must enter into agreements with the proper 20 agencies under such act of congress, which agreements shall 21 become effective in the manner prescribed in the Montana 22 Administrative Procedure Act for the adoption of rules, to 23 provide reciprocal treatment to individuals who have, after 24 acquiring potential rights to benefits under this chapter, 25

acquired rights to unemployment insurance under such act of
 congress or who have, after acquiring potential rights to
 unemployment insurance under such act of congress, acquired
 rights to benefits under this chapter;

5 (g) services performed in the delivery and 6 distribution of newspapers or shopping news from house to 7 house and business establishments by an individual under the 8 age of 18 years, but not including the delivery or 9 distribution to any point or points for subsequent delivery 10 or distribution;

11 (h) services performed by real estate, securities, and 12 insurance salesmen paid solely by commissions and without 13 guarantee of minimum earnings;

(i) service performed in the employ of a school, 14 college, or university if such service is performed by a 15 student who is enrolled and is regularly attending classes 16 17 at such school, college, or university or by the spouse of 18 such a student if such spouse is advised, at the time such 19 spouse commences to perform such service, that the employment of such spouse to perform such service is 20 provided under a program to provide financial assistance to 21 22 such student by such school, college, or university and such employment will not be covered by any program of 23 unemployment insurance; 24

25 (j) service performed by an individual under--the--age

1 of--22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and 2 curriculum and normally has a regularly organized body of 3 students in attendance at the place where its educational 4 activities are carried on, as a student in a full-time 5 program taken for credit at such institution which combines 6 7 academic instruction with work experience if such service is 8 an integral part of such program and such institution has so certified to the employer, except that this subsection shall 9 10 not apply to service performed in a program established for 11 or on behalf of an employer or group of employers;

12 (k) service performed in the employ of a hospital if13 such service is performed by a patient of the hospital;

(1) casual labor not in the course of an employer's
trade or business performed in any calendar quarter, unless
the cash remuneration paid for such service is \$50 or more
and such service is performed by an individual who is
regularly employed by such employer to perform such service.
<u>"Regularly employed" means the services are performed during</u>
at least 24 days in the same quarter.

21 (2) "Employment" does not include elected public
22 officials.

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

25 (a) in the employ of a church or convention or

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association of churches or an organization which is operated
 primarily for religious purposes and which is operated,
 supervised, controlled, or principally supported by a church
 or convention or association of churches;

5 (b) by a duly ordained, commissioned, or licensed 6 minister of a church in the exercise of his ministry or by a 7 member of a religious order in the exercise of duties 8 required by such order;

9 (c) in the employ of a school which is not an 10 institution of higher education, prior to December 31, 1977; 11 (d) in a facility conducted for the purpose of 12 carrying out a program of rehabilitation for individuals 13 whose earning capacity is impaired by age or physical or 14 mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or 15 16 mental capacity, cannot be readily absorbed in the 17 competitive labor market by an individual receiving such 18 rehabilitation or remunerative work:

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

24 (f) for a state prison or other state correctional or 25 custodial institution by an inmate of that institution."

1 Section 4. Section 39-51-301, MCA, is amended to read: 2 *39-51-301. Administration -- duties and powers of 3 department. (1) It shall be the duty of the department to administer this chapter and it shall have power and 4 5 authority to adopt, amend, or rescind such rules, to employ 6 such persons, make such expenditures, require such reports, 7 make such investigations, and take such other action as it 8 deems necessary or suitable to that end. Such-rules-shall-be 9 effective-upon-publication-in-the-manner---not--inconsistent 10 with--the--provisions--of-this-chapter;-which-the-department 11 shall-prescribe-

(2) The department shall determine its own
organization and methods of procedure in accordance with the
provisions of this chapter and shall have an official seal,
which shall be judicially noticed.

16 (3) Whenever the department believes that a change in
17 contribution or benefit rates will become necessary to
18 protect the solvency of the fund, it shall promptly so
19 inform the governor and the legislature and make
20 recommendations with respect thereto.

21 (4) The department and the board may issue subpoenas
22 and compel testimony and the production of evidence,
23 including books and records, in regard to any investigation
24 or proceeding under this chapter."

25 Section 5. Section 39-51-302, MCA, is amended to read:

1	"39-51-302, Regulationsandgeneralandspecial
2	Administrative rules. Generalandspecialrulesmaybe
3	adopted;amended;-or-rescinded-by-the-department-only-after
4	public-hearing-or-opportunity-to-be-heard-thereon,-ofwhich
5	propernoticehasbeengivenGeneral-rules-shall-become
6	effective-l0-days-after-filing-with-the-secretaryofstate
7	andpublicationinoneormorenewspapersofgeneral
8	circulationinthisstateSpecialrulesshallbecome
9	effective10daysafter-notification-to-or-mailing-to-the
10	last-known-address-of-the-individuals-orconcernsaffected
11	therebyRegulationsmay-be-adoptedamendedor-rescinded
12	by-the-department-and-shall-become-effective-inthemanner
13	andat-the-time-prescribed-by-law. The department may adopt
14	procedural and substantive rules necessary to implement this
15	chapter."
16	Section 6. Section 39-51-304, MCA, is amended to read:
17	"39-51-304. Personnel. (1)Exceptasotherwise
18	provided,thedepartment-is-authorized-to-appoint,-fix-the
19	compensation7-and-prescribe-the-duties-andpowersofsuch
20	officers7-accountants7-attorneys7-experts7-and-other-persons
21	asmaybe-necessary-in-the-performance-of-its-duties-under
22	this-chapterThedepartmentmaydelegatetoanysuch
23	personssuch-power-and-authority-as-it-considers-reasonable
24	and-proper-for-the-effective-administration-of-thischapter
25	andmay-in-its-discretion-bond-any-person-handling-money-or

signing-checks-hereundert 1 (2)--No-person-who-is-an-officer-or-committee-member-of 2 any-political-party--organization--or--who--holds--or--is--a 3 candidate-for-any-public-office-may-be-appointed-or-employed 4 under-this-chapter-5 (3) The department shall hire personnel to administer б this chapter in accordance with merit system principles 7 adopted by the merit---system--council department of 8 9 administration." Section 7. Section 39-51-305, MCA, is amended to read: 10 "39-51-305. Department to appoint appeals referees. To 11 hear and decide disputed claims, the department shall 12 appoint such impartial salaried appeals referees as are 13 necessary for the proper administration of this chapter, 14 consisting-of-salaried-examiners-selected in accordance with 15 39-51-304. No person shall participate on behalf of the 16

17 department in any case in which he is an interested party.
18 The department may designate alternates to serve in the
19 absence or disgualification of an appeals referee."

Section 8. Section 39-51-402, MCA, is amended to read:
"39-51-402. Unemployment insurance fund -- state
treasurer-ex-officio custodian -- accounts and deposits. (1)
The state--treasurer commissioner of labor and industry is
the ex officio treasurer and custodian of the unemployment
insurance fund and shall administer such fund in accordance

1	with the-directions-of-the-department-andshallissuehis
2	warrantsupon-it-in-accordance-with-such-regulations-as-the
3	department-shall-prescribe this chapter. He shall maintain
4	within the fund three separate accounts:
5	(a) a clearing account;
6	(b) an unemployment trust fund account; and
7	(c) a benefit account.
8	(2) All money payable to the unemployment insurance
9	fund, upon receipt thereof by the department, must be
10	forwardedto-the-treasurer-who-shall immediately deposit-it
11	deposited in the clearing account. Refunds payable pursuant
12	to 39-51-1110 may be paid from the clearing account upon
13	warrants-issued-by-the-treasurer-under-the-direction-ofthe
14	department. After clearance thereof, all other money in the
15	clearing account must be immediately deposited with the
16	secretary of the treasury of the United States to the credit
17	of the account of this state in the unemployment trust fund,
18	established and maintained pursuant to section 904 of the
19	Social Security Act, as amended,-any-provision-of-law-in
20	this-state-relating-to-the-deposit;-administration;-release;
21	or-disbursement-of-money-in-thepossessionorcustodyof
22	this-state-to-the-contrary-notwithstanding.
23	(3) The benefit account consists of all money
24	requisitioned for the payment of benefits from this state's

1 (4) Except as herein otherwise provided, money in the 2 clearing and benefit accounts may be deposited by--the 3 treasurer;--under--the--direction--of-the-department; in any 4 bank or public depository in which general funds of the 5 state may be deposited, but no public deposit insurance 6 charge or premium may be paid out of the unemployment 7 insurance fund.

8 (5)--The---treasurer---shall---give---a--separate--bond 9 conditioned-upon-the-faithful-performance-of-his--duties--as 10 custodian--of--the--unemployment-insurance-fund-in-an-amount 11 fixed-by-the-department-and-in-a-form-prescribed-by--law--or 12 approved--by--the--attorney--general--Premiums-for-the-bond 13 shall-be-paid-from-the-unemployment-insurance-administration 14 account="

15 Section 9. Section 39-51-1103, MCA, is amended to 16 read:

17 "39-51-1103. Contributions by employers required ---18 payments in lieu thereof authorized for certain employers. 19 (1) Contributions shall accrue and become payable by each 20 employer for each calendar year in which he is subject to 21 this chapter with respect to wages, as defined in 22 39-51-201(19), paid for employment, as defined in this 23 chapter, occurring during such calendar year.

24 (2) Such contributions shall become due and be paid by25 each employer to the department for the fund in accordance

with such regulations as the department may prescribe and
 shall not be deducted in whole or in part from the wages of
 individuals in his employ.

4 (3) In the payment of any contributions, a fractional 5 part of a cent shall be disregarded unless it amounts to 6 one-half cent or more, in which case it shall be increased 7 to 1 cent.

8 (4) Nonprofit organizations defined in section
9 501(c)(3) of the federal Internal Revenue Code and which are
10 exempt from tax under section 501(a) of such code may elect
11 to make payments in lieu of contributions.

12 (5) The state and its political subdivisions,
13 effective January 1, 1977, may elect to make payments in
14 lieu of contributions or pay under a special contributions
15 plan established for governmental entities only."

16 Section 10. Section 39-51-1109, MCA, is amended to 17 read:

18 "39-51-1109. Contribution Tax appeals. Any person aggrieved by any decision, determination, or redetermination 19 20 of the department involving contribution liability, 21 contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of 22 23 contributions is entitled to a review by-the-department-or 24 its-authorized-representative--hereinafter-referred-to-as--a 25 deputy---The--decision--of--the--deputy--is--considered--the

decision-of-the-department;-The--department--or--the--deputy 1 2 conducting--the--review--may--refer-the-matter-to-an-appeals referee,-may-decide-the-application-for-review-on-the--basis 3 of--such--facts--and--information-as-may-be-obtained,-or-may 4 hear-argument-to-secure-further-facts---After--such--review7 5 notice--of-the-decision-must-be-given-to-the-employing-anit-6 Such-decision-made-pursuant-to-such-review-is-considered-the 7 final-decision-of-the-department-unless-the--employing--unit 8 9 or--any--other-such-interested-partyy-within-5-calendar-days 10 after-delivery-of-such-notification--or--within--7--calendar davs--after--such--notification-was-mailed-to-his-last-known 11 12 address,-files-an-appeal-from--this--decision---Such--appeal will--be--referred--to-an-appeals-referee-who-shall-make-his 13 decisions--with--respect--thereto--in--accordance--with--the 14 procedure--prescribed-in-39-51-2403 in accordance with Title 15 2, chapter 4, parts 6 and 7." 16

17 Section 11. Section 39-51-1305, MCA, is amended to 18 read:

19 "39-51-1305. Priority of payment of contributions due 20 under legal dissolutions or distributions. (1) In the event 21 of any distribution of an employer's assets pursuant to an 22 order of any court under the laws of this state, including 23 any receivership, assignment for benefit of creditors, 24 adjudicated insolvency, composition, or similar proceeding, 25 contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages
 of not more than \$250 to each claimant earned within 6
 months of the commencement of the proceeding.

+2)--In--the--event--of--an--employer-s-adjudication-in 4 bankruptcy7--judicially--confirmed--extension--proposal7--or 5 composition--under-the-Federal-Bankruptcy-Act;-contributions 6 then-or-thereafter-due-shall--be--entitled--to--priority--of 7 payment-as-a-debt-due-the-sovereign-power-as-provided-by-the 8 Bankruptcy--Act--of-June-227-1938-(Chapt-575-52-Statt-848);" 9 Section 12. Section 39-51-2104, MCA, is amended to 10 read: 11

12 "39-51-2104. General benefit eligibility conditions.
13 An unemployed individual is eligible to receive benefits for
14 any week of total unemployment within his benefit year only
15 if the department finds that:

(1) he has registered--for-work filed a claim at and 16 thereafter has continued to report at an employment office 17 in accordance with such regulation as the department may 18 prescribe, except that the department may, by regulation, 19 prescribe that in cases in which it finds such requirements 20 oppressive or inconsistent with the purposes of this 21 22 chapter, an unemployed individual may register file a claim 23 and report for work by mail or through other governmental 24 agencies;

(2)--he--has--made--a--claim-for-benefits-in-accordance

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1 with-the-provisions-of-39-51-2401;

(3) he is able to work and is available for work 2 and is seeking work; provided, however, that no claimant is 3 4 considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if 5 б such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has 7 8 been offered to such claimant after the beginning of such 9 illness or disability;

10 (4)(3) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 11 12 week. However, if claimant's benefit year expires during a 13 period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if 14 otherwise eligible, without interruption to serve the 15 waiting week for the new benefit year but will thereafter be 16 required to serve the waiting week before receiving benefits 17 18 during subsequent unemployment in the new benefit year. No 19 week is counted as a week of total unemployment for the purposes of this subsection: 20

(a) if benefits have been paid with respect thereto;
(b) unless the individual was eligible for benefits
with respect thereto;

24 (c) unless it occurs within the benefit year of the25 claimant;

(d) unless it occurs after benefits first could become
 payable to any individual under this chapter."

3 Section 13. Section 39-51-2307, MCA, is amended to
4 read:

5 "39-51-2307. Disgualification because of student 6 status. (1) Effective April 1, 1977, an individual shall be 7 disgualified for benefits during the school year (within the 8 autumn, winter, and spring seasons of the year) or the 9 vacation periods within such school year or during any 10 prescribed school term if claimant is a student regularly 11 attending an established educational institution.

12 (2) Notwithstanding any other provisions in this 13 section, no otherwise eligible individual shall be denied 14 benefits for any week because he is in training approved by 15 the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved 16 by the department by reason of the application of provisions 17 18 in 39-51-2304 or the application of provisions in 19 39-51-2104(3)(2)."

20 Section 14. Section 39-51-2410, MCA, is amended to 21 read:

22 "39-51-2410. Finality of board's decision -- judicial 23 review. (1) Any decision of the board in the absence of an 24 appeal therefrom as herein provided shall become final 30 25 days after the date of notification or mailing thereof,

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1 except in the case of the department when such decision 2 becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any 3 party claiming to be aggrieved thereby has exhausted his 4 remedies before the board. The department shall be deemed to 5 be a party to any judicial action involving any such б decision and may be represented in any such action by an 7 8 attorney employed by the department or at the department's request, by the attorney general. 9

(2) Within 30 days after the date of notification or 10 mailing of the decision of the board, any party aggrieved 11 thereby may secure judicial review thereof by commencing an 12 action in the district court of the county in which said 13 party resides and in which action any other party to the 14 15 proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which 16 shall state the grounds upon which a review is sought, shall 17 be served upon the commissioner of labor and industry or-his 18 designee--and-such-service-shall-be-deemed-completed-service 19 on-all-parties,-but-there-shall-be-left-with--the--party--so 20 21 served---as--many--copies--of--the--petition--as--there--are defendants-and-the-department-shall-forthwith-mail-one--such 22 copy-to-each-such-defendant and all other interested parties 23 in the manner provided in the Montana Rules of Civil 24 Procedure. 25

1 (3) With its answer, the department shall certify and 2 file with said court all documents and papers and a 3 transcript of all testimony taken in the matter, together 4 with the board's findings of fact and decision. The board 5 may also in its discretion certify to such court questions 6 of law involved in any decision by it.

7 (4) Whenever the department seeks review of a decision
8 of the board, all interested parties shall be served with a
9 copy of its petition together with all documents filed with
10 the court.

11 (5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the 12 13 facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall 14 15 be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner 16 and shall be given precedence over all other civil cases 17 except cases arising under the workers' compensation law of 18 this state. 19

20 (6) An appeal may be taken from the decision of the 21 district court to the supreme court of Montana in the same 22 manner, but not inconsistent with the provisions of this 23 chapter, as is provided in civil cases. It shall not be 24 necessary in any judicial proceeding under this section to 25 enter exceptions to the rulings of the board and no bond

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1 shall be required for entering such appeal. Upon the final 2 determination of such judicial proceeding, the department 3 shall enter an order in accordance with such determination." 4 NEW SECTION. Section 15. Extension of authority. Any existing authority of the department of labor and industry 5 6 to make rules on the subject of the provisions of this act 7 is extended to the provisions of this act. 8 NEW SECTION. Section 16. Effective date. This act is

9 effective on passage and approval.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 206-85

Form BD-15

In compliance with a written request received <u>January 24</u>, 19<u>85</u>, there is hereby submitted a Fiscal Note for <u>H.B. 428</u> 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:

This bill generally revises the unemployment insurance laws, including departmental duties, clarification of filing claims, and definition of employer.

ASSUMPTIONS:

Section 39-51-202 "Employer Defined" is the only section in the proposed bill which creates a fiscal impact. Therefore, all assumption will pertain to that section only.

- 1. During the biennium, only new employers that are subject to Unemployment Insurance Coverage will be affected by the proposed law.
- 2. Under current law it is estimated there will be 3,000 new employers that become subject to coverage each year of the biennium.
- 3. It is estimated that 5% of the 3,000 new employers will have total payroll of less than \$1,500.
- 4. These 150 employers will have an average taxable payroll of approximately \$800 per year.
- 5. These 150 employers will have an average tax rate of 3.5%.

FISCAL IMPACT ON EXPENDABLE TRUST FUND:

	<u>FY 1986</u>	<u>FY 1987</u>
Current Law Proposed Law	\$ 67,000,000 66,995,800	
Net Decrease	(\$ 4,200) (\$ 4,200)

No Impact on State General Fund.

BUDGET DIRECTOR Office of Budget and Program Planning

VAN 29 Date:

49th Legislature

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APPROVED BY COMM. ON BUSINESS AND LABOR

1	STATEMENT OF INTENT
2	HOUSE BILL 428
3	House Business and Labor Committee

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5 A statement of intent is needed for this bill because section 5 amends 39-51-302 to clarify, modernize, and make 6 7 more direct the existing grant of authority to the 8 department of labor and industry to adopt unemployment compensation rules, and section 6 amends 39-51-304 to 9 substitute the department of administration for the merit 10 system council as the agency adopting merit system 11 principles to be followed by the department of labor and 12 industry in hiring personnel to administer the unemployment 13 14 compensation law.

Both amendments are for purposes of coordinating
existing rulemaking authority with prior changes in the law.
Each department should continue its current rules in effect
and continue to adopt rules in the areas in which it is
already adopting rules.

Montana Legislative Council

SECOND READING HB 429

1	HOUSE BILL NO. 428
2	INTRODUCED BY MILES
3	BY REQUEST OF THE DEPARTMENT
4	OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
UNEMPLOYMENT INSURANCE LAW; AMENDING SECTIONS 39-51-201,
39-51-202, 39-51-204, 39-51-301, 39-51-302, 39-51-304,
39-51-305, 39-51-402, 39-51-1103, 39-51-1109, 39-51-1305,
39-51-2104, 39-51-2307, AND 39-51-2410, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."

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

14 Section 1. Section 39-51-201, MCA, is amended to read: 15 "39-51-201. General definitions. As used in this 16 chapter, unless the context clearly requires otherwise, the 17 following definitions apply:

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

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

(3)--"Annual-total-payroll"-means-the-total-of-the-four
 quarters-of-total-payrolls--of--an--employer--preceding--the
 computation-date-as-fixed-herein+

(4)(2) "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. For an individual who fails to 10 11 meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar 12 statute of another state or the United States, the base 13 period means the first four quarters of the last five 14 quarters preceding the disability if a claim for 15 unemployment benefits is filed within 18 months of the 16 individual's last employment. 17

18 (5)(3) "Benefits" means the money payments payable to 19 an individual, as provided in this chapter, with respect to 20 his unemployment.

21 (6)(4) "Benefit year", with respect to any individual, 22 means the 52 consecutive-week period beginning with the 23 first day of the calendar week in which such individual 24 files a valid claim for benefits, except that the benefit 25 year shall be 53 weeks if filing a new valid claim would



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1 result in overlapping any quarter of the base year of a 2 previously filed new claim. A subsequent benefit year may 3 not be established until the expiration of the current 4 benefit year. However, in the case of a combined-wage claim 5 pursuant to the arrangement approved by the secretary of 6 labor of the United States, the base period is the period 7 applicable under the unemployment law of the paying state. 8 (7)(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17. 9

10 (18)(6) "Calendar quarter" means the period of 3
11 consecutive calendar months ending on March 31, June 30,
12 September 30, or December 31.

13 (9)(7) "Contributions" means the money payments to the 14 state unemployment insurance fund required by this chapter. 15 (10)(8) "Department" means the department of labor and 16 industry provided for in Title 2, chapter 15, part 17.

17 (9) "Employing unit" means any individual or 18 organization, including the state government, any of its 19 political subdivisions instrumentalities, or anv 20 partnership, association, trust, estate, joint-stock 21 company, insurance company, or corporation, whether domestic 22 or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a 23 24 deceased person which has or subsequent to January 1, 1936, 25 had in its employ one or more individuals performing

1 services for it within this state, except as provided under 2 subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit 3 which maintains two or more separate establishments within 4 this state are considered to be employed by a single 5 6 employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the 7 8 work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of 9 10 this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or 11 employee, provided the employing unit has actual or 12 constructive knowledge of the work. 13

14 (12)(10) "Employment office" means a free public 15 employment office or branch thereof operated by this state 16 or maintained as a part of a state-controlled system of 17 public employment offices or such other free public 18 employment offices operated and maintained by the United 19 States government or its instrumentalities as the department 20 may approve.

21 (13)(11) "Fund" means the unemployment insurance fund
22 established by this chapter to which all contributions and
23 payments in lieu of contributions are required and from
24 which all benefits provided under this chapter shall be
25 paid.

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1 (144)(12) "Gross misconduct" means a criminal act, other 2 than a violation of a motor vehicle traffic law, for which 3 an individual has been convicted in a criminal court or has 4 admitted or conduct which demonstrates a flagrant and wanton 5 disregard of and for the rights or title or interest of a 6 fellow employee or his employer.

7 (±5;(13) "Hospital" means an institution which has been 8 licensed, certified, or approved by the state as a hospital. 9 (±6;(14) (a) "Institution of higher education", for the 10 purposes of this part, means an educational institution 11 which:

12 (i) admits as regular students only individuals having
13 a certificate of graduation from a high school or the
14 recognized equivalent of such a certificate;

15 (ii) is legally authorized in this state to provide a16 program of education beyond high school;

17 (iii) provides an educational program for which it 18 awards a bachelor's or higher degree or provides a program 19 which is acceptable for full credit toward such a degree, a 20 program of postgraduate or postdoctoral studies, or a 21 program of training to prepare students for gainful 22 employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

23

(b) Notwithstanding any of the foregoing provisions ofthis subsection, all colleges and universities in this state

are institutions of higher education for purposes of this
 part.

3 (17)(15) "State" includes, in addition to the states of
4 the United States of America, the District of Columbia,
5 Puerto Rico, the Virgin Islands, and the Dominion of Canada.
6 (18)(16) "Unemployment insurance administration fund"
7 means the unemployment insurance administration fund
8 established by this chapter from which administrative
9 expenses under this chapter shall be paid.

+19>(17) (a) "Wages" means all remuneration payable for 10 personal services, including commissions and bonuses, and 11 12 the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute 13 related to employment. The reasonable cash value of 14 remuneration payable in any medium other than cash shall be 15 estimated and determined in accordance with rules prescribed 16 17 by the department.

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

19 (i) the amount of any payment made to or on behalf of20 an employee by an employer on account of:

21 (A) retirement;

22 (B) sickness or accident disability;

23 (C) medical and hospitalization expenses in connection

24 with sickness or accident disability; or

25 (D) death;

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1 (ii) remuneration paid by any county welfare office 2 from public assistance funds for services performed at the 3 direction and request of such county welfare office.

4 (20)(18) "Week" means a period of 7 consecutive 5 calendar days ending at midnight on Saturday.

6 (19) An individual's "weekly benefit amount" means 7 the amount of benefits he would be entitled to receive for 1 8 week of total unemployment."

9 Section 2. Section 39-51-202, MCA, is amended to read: 10 "39-51-202. Employer defined. "Employer" means:

11 (1) any employing unit whose total annual payroll 12 within either the current or preceding calendar year exceeds 13 the sum of \$500 \$1,000;

14 (2) any individual or employing unit which acquired 15 the organization, trade, or business or substantially all of 16 the assets thereof of another which at the time of such 17 acquisition was an employer subject to this chapter;

18 (3) any individual or employing unit which acquired 19 the organization, trade, or business or substantially all 20 the assets thereof of another employing unit not an employer 21 subject to this chapter and which, if subsequent to such 22 acquisition it were treated as a single unit with such other employing unit, would be an employer under subjection (1) of 23 24 this section;

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(4) any employing unit not an employer b reason of

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1 any other subsection of this section for which, within either the current or preceding calendar year, service is or 2 was performed with respect to which such employing unit is 3 liable for any federal tax against which credit may be 4 taken for contributions paid into a state unemployment fund 5 or an employing unit which, as a condition for approval of 6 this chapter for full tax credit against the tax imposed by 7 the Federal Unemployment Tax Act, is required pursuant to 8 such act to be an employer under this chapter; 9

(5) any employing unit which, having become an 10 employer under subsection (1), (2), (3), or (4) has not, 11 under 39-51-1101, ceased to be an employer subject to this 12 13 chapter; or

(6) for the effective period of its election pursuant 14 to 39-51-1102, any other employing unit which has elected to 15 become fully subject to this chapter." 16

Section 3. Section 39-51-204, MCA, is amended to read: 17 12 "39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include: 19

(a) agricultural labor, except as provided in 20 21 39-51-203(8);

(b) domestic service in a private home, local college 22 club, or local chapter of a college fraternity or sorority, 23 24 except as provided in 39-51-203(9);

(c) service performed as an officer or member of the 25

crew of a vessel on the navigable waters of the United
 States:

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3 (d) service performed by an individual in the employ
4 of his son, daughter, or spouse and service performed by a
5 child under the age of 21 in the employ of his father or
6 mother;

(e) service performed in the employ of any other state 7 or its political subdivisions or of the United States 8 9 government or of an instrumentality of any other state or states or their political subdivisions or of the United 10 States, except that national banks organized under the 11 national banking law shall not be entitled to exemption 12 under this subsection and shall be subject to this chapter 13 14 the same as state banks, provided that such service is excluded from employment as defined in the Federal 15 Unemployment Tax Act by section 3306(c)(7) of that act; 16

(f) service with respect to which unemployment 17 insurance is payable under an unemployment insurance system 18 established by an act of congress, provided that the 19 department must enter into agreements with the proper 20 agencies under such act of congress, which agreements shall 21 22 become effective in the manner prescribed in the Montana 23 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after 24 acquiring potential rights to benefits under this chapter, 25

acquired rights to unemployment insurance under such act of
 congress or who have, after acquiring potential rights to
 unemployment insurance under such act of congress, acquired
 rights to benefits under this chapter;

5 (9) services performed in the delivery and 6 distribution of newspapers or shopping news from house to 7 house and business establishments by an individual under the 8 age of 18 years, but not including the delivery or 9 distribution to any point or points for subsequent delivery 10 or distribution;

11 (h) services performed by real estate, securities, and 12 insurance salesmen paid solely by commissions and without 13 guarantee of minimum earnings;

(i) service performed in the employ of a school, 14 college, or university if such service is performed by a 15 student who is enrolled and is regularly attending classes 16 at such school, college, or university or by the spouse of 17 such a student if such spouse is advised, at the time such 18 19 spouse commences to perform such service, that the 20 employment of such spouse to perform such service is provided under a program to provide financial assistance to 21 22 such student by such school, college, or university and such employment will not be covered by any program of 23 24 unemployment insurance;

25 (j) service performed by an individual under--the--age

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1 of--22 who is enrolled at a nonprofit or public educational 2 institution, which normally maintains a regular faculty and 3 curriculum and normally has a regularly organized body of 4 students in attendance at the place where its educational 5 activities are carried on, as a student in a full-time 6 program taken for credit at such institution which combines 7 academic instruction with work experience if such service is 8 an integral part of such program and such institution has so 9 certified to the employer, except that this subsection shall 10 not apply to service performed in a program established for 11 or on behalf of an employer or group of employers;

12 (k) service performed in the employ of a hospital if13 such service is performed by a patient of the hospital;

(1) casual labor not in the course of an employer's
trade or business performed in any calendar quarter, unless
the cash remuneration paid for such service is \$50 or more
and such service is performed by an individual who is
regularly employed by such employer to perform such service.
<u>"Regularly employed" means the services are performed during</u>
at least 24 days in the same guarter.

21 (2) "Employment" does not include elected public22 officials.

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

25 (a) in the employ of a church or convention or

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association of churches or an organization which is operated
 primarily for religious purposes and which is operated,
 supervised, controlled, or principally supported by a church
 or convention or association of churches;

5 (b) by a duly ordained, commissioned, or licensed 6 minister of a church in the exercise of his ministry or by a 7 member of a religious order in the exercise of duties 8 required by such order;

(c) in the employ of a school which is not an 9 institution of higher education, prior to December 31, 1977; 10 (d) in a facility conducted for the purpose of 11 carrying out a program of rehabilitation for individuals 12 whose earning capacity is impaired by age or physical or 13 mental deficiency or injury or providing remunerative work 14 for individuals who, because of their impaired physical or 15 mental capacity, cannot be readily absorbed in the 16 competitive labor market by an individual receiving such 17 rehabilitation or remunerative work; 18

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

24 (f) for a state prison or other state correctional or25 custodial institution by an inmate of that institution."

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Section 4. Section 39-51-301, MCA, is amended to read: 1 "39-51-301. Administration -- duties and powers of 2 department. (1) It shall be the duty of the department to 3 administer this chapter and it shall have power and 4 authority to adopt, amend, or rescind such rules, to employ 5 such persons, make such expenditures, require such reports, б make such investigations, and take such other action as it 7 deems necessary or suitable to that end. Such-rules-shall-be 8 effective-upon-publication-in-the-manner,--not--inconsistent 9 with--the--provisions--of-this-chaptery-which-the-department 10 shall-prescribe-11

12 (2) The department shall determine its own 13 organization and methods of procedure in accordance with the 14 provisions of this chapter and shall have an official seal, 15 which shall be judicially noticed.

(3) Whenever the department believes that a change in
contribution or benefit rates will become necessary to
protect the solvency of the fund, it shall promptly so
inform the governor and the legislature and make
recommendations with respect thereto.

(4) The department and the board may issue subpoenas
 and compel testimony and the production of evidence,
 including books and records, in regard to any investigation
 or proceeding under this chapter."

25 Section 5. Section 39-51-302, MCA, is amended to read:

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"39-51-302. Regulations---and---general---and--special 1 Administrative rules. General--and--special--rules--may--be 2 adopted, -- amended, -or - reacinded - by - the - department - only - after 3 public-hearing-or-opportunity-to-be-heard-thereonz-of--which 4 proper--notice--has--been--given--General-rules-shall-become 5 effective-10-days-after-filing-with-the-secretary--of--state 6 and--publication--in--one--or--more--newspapers--of--general 7 circulation--in--this--state---Special--rules--shall--become 8 9 effective--10--days--after-notification-to-or-mailing-to-the last-known-address-of-the-individuals-or--concerns--affected 10 11 thereby --- Regulations -- may -be - adopted -- amended -- or - rescinded by-the-department-and-shall-become-effective-in--the--manner 12 and--at-the-time-prescribed-by-law. The department may adopt 13 procedural and substantive rules necessary to implement this 14 15 chapter." 16 Section 6. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. (1)---Except---as---otherwise 17 provided7--the--department-is-authorized-to-appoint7-fix-the 18 compensation,-and-prescribe-the-duties-and--powers--of--such 19 20 officers7-accountants7-attorneys7-experts7-and-other-persons as--may--be-necessary-in-the-performance-of-its-duties-under 21 22 this-chapter---The--department--may--delegate--to--any--such persons--such-power-and-authority-as-it-considers-reasonable 23 24 and-proper-for-the-effective-administration-of-this--chapter and--may-in-its-discretion-bond-any-person-handling-money-or 25

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signing-checks-hereunder.
 (2)--No-person-who-is-an-officer-or-committee-member-of
 any-political-party-organization--or--who--holds--or--is--a
 candidate-for-any-public-office-may-be-appointed-or-employed
 under-this-chapter.

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6 (3) The department shall hire personnel to administer
7 this chapter in accordance with merit system principles
8 adopted by the merit---system--council department of
9 administration."

10 Section 7. Section 39-51-305, MCA, is amended to read: "39-51-305. Department to appoint appeals referees. To 11 12 hear and decide disputed claims, the department shall 13 appoint such impartial salaried appeals referees as are 14 necessary for the proper administration of this chapter, consisting-of-salaried-examiners-selected in accordance with 15 16 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. 17 18 The department may designate alternates to serve in the 19 absence or disqualification of an appeals referee."

Section 8. Section 39-51-402, MCA, is amended to read:
"39-51-402. Unemployment insurance fund -- state
treasurer-ex-officie custodian -- accounts and deposits. (1)
The state--treasurer commissioner of labor and industry is
the ex officio treasurer and custodian of the unemployment
insurance fund and shall administer such fund in accordance

with the-directions-of-the-department-and--shall--issue--his
 warrants--upon-it-in-accordance-with-such-regulations-as-the
 department-shall-prescribe this chapter. He shall maintain
 within the fund three separate accounts:

(a) a clearing account;

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(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance 8 9 fund, upon receipt thereof by the department, must be forwarded--to-the-treasurer-who-shall immediately deposit-it 10 deposited in the clearing account. Refunds payable pursuant 11 12 to 39-51-1110 may be paid from the clearing account upon warrants-issued-by-the-treasurer-under-the-direction-of--the 13 department. After clearance thereof, all other money in the 14 clearing account must be immediately deposited with the 15 secretary of the treasury of the United States to the credit 16 of the account of this state in the unemployment trust fund, 17 18 established and maintained pursuant to section 904 of the Social Security Act, as amended,-any-provision-of-law-in 19 this-state-relating-to-the-deposit,-administration,-release; 20 or-disbursement-of-money-in-the--possession--of--custody--of 21 22 this-state-to-the-contrary-notwithstanding.

(3) The benefit account consists of all money
requisitioned for the payment of benefits from this state's
account in the unemployment trust fund.

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1 (4) Except as herein otherwise provided, money in the 2 clearing and benefit accounts may be deposited by--the 3 treasurer,--under--the--direction--of-the-department, in any 4 bank or public depository in which general funds of the 5 state may be deposited, but no public deposit insurance 6 charge or premium may be paid out of the unemployment 7 insurance fund.

8 (5)--The---treasurer---shall---give---a--separate--bond 9 conditioned-upon-the-faithful-performance-of-his--duties--as 10 custodian--of--the--unemployment-insurance-fund-in-an-amount 11 fixed-by-the-department-and-in-a-form-prescribed-by--law--or 12 approved--by--the--attorney--general---Premiums-for-the-bond 13 shall-be-paid-from-the-unemployment-insurance-administration 14 account-"

15 Section 9. Section 39-51-1103, MCA, is amended to 16 read:

17 "39-51-1103. Contributions by employers required ---18 payments in lieu thereof authorized for certain employers. 19 (1) Contributions shall accrue and become payable by each 20 employer for each calendar year in which he is subject to 21 this chapter with respect to wages, as defined in 22 39-51-201+197, paid for employment, as defined in this 23 chapter, occurring during such calendar year.

24 (2) Such contributions shall become due and be paid by25 each employer to the department for the fund in accordance

with such regulations as the department may prescribe and
 shall not be deducted in whole or in part from the wages of
 individuals in his employ.

4 (3) In the payment of any contributions, a fractional 5 part of a cent shall be disregarded unless it amounts to 6 one-half cent or more, in which case it shall be increased 7 to 1 cent.

8 (4) Nonprofit organizations defined in section
9 501(c)(3) of the federal Internal Revenue Code and which are
10 exempt from tax under section 501(a) of such code may elect
11 to make payments in lieu of contributions.

12 (5) The state and its political subdivisions,
13 effective January 1, 1977, may elect to make payments in
14 lieu of contributions or pay under a special contributions
15 plan established for governmental entities only."

16 Section 10. Section 39-51-1109, MCA, is amended to 17 read:

18 "39-51-1109. Contribution Tax appeals. Any person aggrieved by any decision, determination, or redetermination 19 of the department involving contribution liability, 20 contribution rate, application for refund, or the charging 21 of benefit payments to employers making payment in lieu of 22 contributions is entitled to a review by-the-department-or 23 its-authorized-representative;-hereinafter-referred-to-as--a 24 deputy---The--decision--of--the--deputy--is--considered--the 25

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1 decision-of-the-department:-The--department--or--the--deputy 2 conducting--the--review--may--refer-the-matter-to-an-appeals referee,-may-decide-the-application-for-review-on-the--basis 3 of--such--facts--and--information-as-may-be-obtained;-or-may 4 5 hear-argument-to-secure-further-facts--After--such--review7 6 notice--of-the-decision-must-be-given-to-the-employing-unit-7 Such-decision-made-pursuant-to-such-review-is-considered-the 8 final-decision-of-the-department-unless-the--employing--unit 9 or--any--other-such-interested-party--within-5-calendar-days 10 after-delivery-of-such-notification--or--within--7--calendar days--after--such--notification-was-mailed-to-his-last-known 11 12 addressy-files-an-appeal-from--this--decision---Such--appeal 13 will--be--referred--to-sn-appeals-referee-who-shall-make-his 14 decisions--with--respect--thereto--in--accordance--with--the procedure--prescribed-in-39-51-2403 in accordance with Title 15 16 2, chapter 4, parts 6 and 7." 17

17 Section 11. Section 39-51-1305, MCA, is amended to
18 read:

19 "39-51-1305. Priority of payment of contributions due 20 under legal dissolutions or distributions. (1) In the event 21 of any distribution of an employer's assets pursuant to an 22 order of any court under the laws of this state, including 23 any receivership, assignment for benefit of creditors, 24 adjudicated insolvency, composition, or similar proceeding, 25 contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages
 of not more than \$250 to each claimant earned within 6
 months of the commencement of the proceeding.

4 t2)--In--the--event--of--an--employer's-adjudication-in 5 bankruptcy7--judicially--confirmed--extension--proposal7--or 6 composition--under-the-Pederal-Bankruptcy-Acty-contributions 7 then-or-thereafter-due-shall--be--entitled--to--priority--of 8 payment-as-a-debt-due-the-sovereign-power-as-provided-by-the 9 Bankruptev--Act--of-June-227-1938-(Chapt-575-52-Statt-840);" 10 Section 12. Section 39-51-2104, MCA, is amended to 11 read:

12 "39-51-2104. General benefit eligibility conditions.
13 An unemployed individual is eligible to receive benefits for
14 any week of total unemployment within his benefit year only
15 if the department finds that:

16 (1) he has registered--for-work filed a claim at and 17 thereafter has continued to report at an employment office 18 in accordance with such regulation as the department may 19 prescribe, except that the department may, by regulation, 20 prescribe that in cases in which it finds such requirements 21 oppressive or inconsistent with the purposes of this 22 chapter, an unemployed individual may register file a claim 23 and report for work by mail or through other governmental 24 agencies:

25 (2)--he--has--made--a--claim-for-benefits-in-accordance

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1 with-the-provisions-of-39-51-2401;

(3) (2) he is able to work and is available for work 2 and is seeking work; provided, however, that no claimant is 3 considered ineligible in any week of unemployment for 4 failure to comply with the provisions of this subsection if 5 such failure is due to an illness or disability which occurs 6 after he has registered for work and no suitable work has 7 been offered to such claimant after the beginning of such 8 illness or disability; 9

(4)(3) prior to any week for which he claims benefits 10 he has been totally unemployed for a waiting period of 1 11 week. However, if claimant's benefit year expires during a 12 period of compensable unemployment, claimant will continue 13 to receive weekly benefits in a new benefit year, if 14 eligible, without interruption to serve the 15 otherwise waiting week for the new benefit year but will thereafter be 16 required to serve the waiting week before receiving benefits 17 during subsequent unemployment in the new benefit year. No 18 week is counted as a week of total unemployment for the 19 purposes of this subsection: 20

21 (a) if benefits have been paid with respect thereto;
22 (b) unless the individual was eligible for benefits
23 with respect thereto;

(c) unless it occurs within the benefit year of the
 claimant;

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(d) unless it occurs after benefits first could become
 payable to any individual under this chapter."

3 Section 13. Section 39-51-2307, MCA, is amended to 4 read:

5 "39-51-2307. Disqualification because of student 6 status. (1) Effective April 1, 1977, an individual shall be 7 disqualified for benefits during the school year (within the 8 autumn, winter, and spring seasons of the year) or the 9 vacation periods within such school year or during any 10 prescribed school term if claimant is a student regularly 11 attending an established educational institution.

(2) Notwithstanding any other provisions in this 12 section, no otherwise eligible individual shall be denied 13 benefits for any week because he is in training approved by 14 the department, nor shall such individual be denied benefits 15 16 with respect to any week in which he is in training approved by the department by reason of the application of provisions 17 in 39-51-2304 or the application of provisions in 18 39-51-2104+3+(2)." 19

20 Section 14. Section 39-51-2410, MCA, is amended to 21 read:

"39-51-2410. Finality of board's decision -- judicial
review. (1) Any decision of the board in the absence of an
appeal therefrom as herein provided shall become final 30
days after the date of notification or mailing thereof,

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1 except in the case of the department when such decision 2 becomes final 20 days following the board's decision, and 3 judicial review thereof shall be permitted only after any 4 party claiming to be aggrieved thereby has exhausted his 5 remedies before the board. The department shall be deemed to 6 be a party to any judicial action involving any such 7 decision and may be represented in any such action by an 8 attorney employed by the department or at the department's 9 request, by the attorney general,

10 (2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved 11 12 thereby may secure judicial review thereof by commencing an action in the district court of the county in which said 13 14 party resides and in which action any other party to the 15 proceeding before the board shall be made a defendant. In 16 such action a petition, which need not be verified but which 17 shall state the grounds upon which a review is sought, shall 18 be served upon the commissioner of labor and industry of-his 19 designee--and-such-service-shall-be-deemed-completed-service 20 on-all-parties7-but-there-shall-be-left-with--the--party--so 21 served---as--many--copies--of--the--petition--as--there--are 22 defendants-and-the-department-shall-forthwith-mail-one--such 23 copy-to-each-such-defendant and all other interested parties 24 in the manner provided in the Montana Rules of Civil 25 Procedure.

1 (3) With its answer, the department shall certify and 2 file with said court all documents and papers and a 3 transcript of all testimony taken in the matter, together 4 with the board's findings of fact and decision. The board 5 may also in its discretion certify to such court questions 6 of law involved in any decision by it.

7 (4) Whenever the department seeks review of a decision
8 of the board, all interested parties shall be served with a
9 copy of its petition together with all documents filed with
10 the court.

(5) In any judicial proceeding under 39-51-2406 11 through 39-51-2410, the findings of the board as to the 12 facts, if supported by evidence and in the absence of fraud, 13 shall be conclusive and the jurisdiction of said court shall 14 be confined to questions of law. Such action and the 15 questions so certified shall be heard in a summary manner 16 and shall be given precedence over all other civil cases 17 except cases arising under the workers' compensation law of 18 this state. 19

20 (6) An appeal may be taken from the decision of the 21 district court to the supreme court of Montana in the same 22 manner, but not inconsistent with the provisions of this 23 chapter, as is provided in civil cases. It shall not be 24 necessary in any judicial proceeding under this section to 25 enter exceptions to the rulings of the board and no bond

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1 shall be required for entering such appeal. Upon the final 2 determination of such judicial proceeding, the department 3 shall enter an order in accordance with such determination." 4 NEW SECTION. SECTION 15. COLLECTION OF BENEFIT 5 OVERPAYMENTS. A PERSON WHO RECEIVES BENEFITS NOT AUTHORIZED 6 BY THIS CHAPTER SHALL REPAY TO THE DEPARTMENT, EITHER 7 DIRECTLY OR AS AUTHORIZED BY THE DEPARTMENT, BY OFFSET OF 8 FUTURE BENEFITS TO WHICH HE MAY BE ENTITLED, OR BY A COMBINATION OF BOTH SUCH METHODS, A SUM EQUAL TO THE AMOUNT 9 10 RECEIVED BY HIM UNLESS THE DEPARTMENT FINDS THAT THE BENEFITS WERE RECEIVED THROUGH NO FAULT OF THE PERSON AND 11 12 THE RECOVERY OF SUCH BENEFITS WOULD BE AGAINST EQUITY AND 13 GOOD CONSCIENCE. 14 NEW SECTION. Section 16. Extension of authority. Any

1

15 existing authority of the department of labor and industry 16 to make rules on the subject of the provisions of this act 17 is extended to the provisions of this act.

18 <u>NEW SECTION.</u> Section 17. Effective date. This act is
19 effective on passage and approval.

-End-

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1	STATEMENT OF INTENT
2	HOUSE BILL 428
3	House Business and Labor Committee
4	

A statement of intent is needed for this bill because 5 6 section 5 amends 39-51-302 to clarify, modernize, and make more direct the existing grant of authority to the 7 department of labor and industry to adopt unemployment 8 compensation rules, and section 6 amends 39-51-304 to 9 10 substitute the department of administration for the merit system council as the agency adopting merit system 11 principles to be followed by the department of labor and 12 13 industry in hiring personnel to administer the unemployment 14 compensation law.

Both amendments are for purposes of coordinating
existing rulemaking authority with prior changes in the law.
Each department should continue its current rules in effect
and continue to adopt rules in the areas in which it is
already adopting rules.

THIRD READING

HB 428

Moncana Legislative Council

HB 0428/02

1	HOUSE BILL NO. 428	
2	INTRODUCED BY MILES	
3	BY REQUEST OF THE DEPARTMENT	
4	OF LABOR AND INDUSTRY	
5		
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	
7	UNEMPLOYMENT INSURANCE LAW; AMENDING SECTIONS 39-51-201,	
8	39-51-202, 39-51-204, 39-51-301, 39-51-302, 39-51-304,	
9	39-51-305, 39-51-402, 39-51-1103, 39-51-1109, 39-51-1305,	
10	39-51-2104, 39-51-2307, AND 39-51-2410, MCA; AND PROVIDING	1
11	AN IMMEDIATE EFFECTIVE DATE."	1
12		1
13	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	1
14	Section 1. Section 39-51-201, MCA, is amended to read:	1
15	"39-51-201. General definitions. As used in this	1
16	chapter, unless the context clearly requires otherwise, the	1
17	following definitions apply:	1
18	(1)Theword"administrator"referstoaperson	1
19	appointedbythecommissioneroflaborand-industry-to	1
20	direct-and-administer-the-unemploymentinsurancelawsand	2
21	federallawsfallingwithintheadministrator's	2
22	jurisdiction-	2
23	(2) "Annual payroll" means the total amount of	2
24	wages paid by an employer, regardless of the time of	2
25	payment, for employment during a calendar year.	2

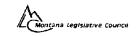
(3)---"Annual-total-payroll"-means-the-total-of-the-four
 quarters-of-total-payrolls--of--an--employer--preceding--the
 computation-date-as-fixed-herein-

4 (4)(2) "Base period" means the first four of the last 5 five completed calendar guarters immediately preceding the 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 9 base period shall be that applicable under the unemployment 10 law of the paying state. For an individual who fails to 11 meet the qualifications of 39-51-2105 due to a temporary 12 total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base 13 14 period means the first four quarters of the last five quarters preceding the disability if a claim for 15 16 unemployment benefits is filed within 18 months of the 17 individual's last employment.

18 (5)(3) "Benefits" means the money payments payable to 19 an individual, as provided in this chapter, with respect to 20 his unemployment.

21 (6)(4) "Benefit year", with respect to any individual, 22 means the 52 consecutive-week period beginning with the 23 first day of the calendar week in which such individual 24 files a valid claim for benefits, except that the benefit 25 year shall be 53 weeks if filing a new valid claim would

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1 result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may 2 3 not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim 4 5 pursuant to the arrangement approved by the secretary of 6 labor of the United States, the base period is the period applicable under the unemployment law of the paying state. 7 8 {7}(5) "Board" means the board of labor appeals 9 provided for in Title 2, chapter 15, part 17.

10 (\$;(6) "Calendar quarter" means the period of 3
11 consecutive calendar months ending on March 31, June 30,
12 September 30, or December 31.

13 (9)(7) "Contributions" means the money payments to the
14 state unemployment insurance fund required by this chapter.
15 (10)(8) "Department" means the department of labor and
16 industry provided for in Title 2, chapter 15, part 17.

flt;(9) "Employing unit" means any individual or 17 18 organization, including the state government, any of its 19 politi al subdivisions or instrumentalicies, any 20 part ership, association, trust, estate, joint-stock 21 company, insurance company, or corporation, whether domestic 22 or foreign, or the receiver, trustee in bankruptcy, trustee 23 or successor thereof, or the legal representative of a 24 deceased person which has or subsequent to January 1, 1936, 25 had in its employ one or more individuals performing

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1 services for it within this state, except as provided under 2 subsections (8) and (9) of 39-51-203. All individuals 3 performing services within this state for any employing unit 4 which maintains two or more separate establishments within 5 this state are considered to be employed by a single 6 employing unit for all the purposes of this chapter. Each 7 individual employed to perform or assist in performing the 8 work of any agent or employee of an employing unit is deemed 9 to be employed by such employing unit for the purposes of 10 this chapter, whether such individual was hired or paid 11 directly by such employing unit or by such agent or 12 employee, provided the employing unit has actual or 13 constructive knowledge of the work.

14 (12)(10) "Employment office" means a free public 15 employment office or branch thereof operated by this state 16 or maintained as a part of a state-controlled system of 17 public employment offices or such other free public 18 employment offices operated and maintained by the United 19 States government or its instrumentalities as the department 20 may approve.

21 (13)(11) "Fund" means the unemployment insurance fund
22 established by this chapter to which all contributions and
23 payments in lieu of contributions are required and from
24 which all benefits provided under this chapter shall be
25 paid.

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1 (14)(12) "Gross misconduct" means a criminal act, other 2 than a violation of a motor vehicle traffic law, for which 3 an individual has been convicted in a criminal court or has 4 admitted or conduct which demonstrates a flagrant and wanton 5 disregard of and for the rights or title or interest of a 6 fellow employee or his employer.

7 (15)(13) "Hospital" means an institution which has been 8 licensed, certified, or approved by the state as a hospital. 9 (16)(14) (a) "Institution of higher education", for the 10 purposes of this part, means an educational institution 11 which:

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

(ii) is legally authorized in this state to provide aprogram of education beyond high school;

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

(iv) is a public or other nonprofit institution.
(b) Notwithstanding any of the foregoing provisions of
this subsection, all colleges and universities in this state

are institutions of higher education for purposes of this
 part.

3 (17)(15) "State" includes, in addition to the states of
4 the United States of America, the District of Columbia,
5 Puerto Rico, the Virgin Islands, and the Dominion of Canada.
6 (10) "Unemployment insurance administration fund"
7 means the unemployment insurance administration fund
8 established by this chapter from which administrative
9 expenses under this chapter shall be paid.

10 (17) (a) "Wages" means all remuneration payable for 11 personal services, including commissions and bonuses, and 12 the cash value of all remuneration payable in any medium 13 other than cash, and backpay received pursuant to a dispute 14 related to employment. The reasonable cash value of 15 remuneration payable in any medium other than cash shall be 16 estimated and determined in accordance with rules prescribed 17 by the department.

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

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

- 21 (A) retirement;
- 22 (B) sickness or accident disability;
- 23 (C) medical and hospitalization expenses in connection

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- 24 with sickness or accident disability; or
- 25 (D) death;

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I (ii) remuneration paid by any county welfare office 2 from public assistance funds for services performed at the 3 direction and request of such county welfare office.

4 (20)(18) "Week" means a period of 7 consecutive
5 calendar days ending at midnight on Saturday.

6 (flif(19) An individual's "weekly benefit amount" means
7 the amount of benefits he would be entitled to receive for 1
8 week of total unemployment."

9 Section 2. Section 39-51-202, MCA, is amended to read:
10 "39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payrol?
 within either the current or preceding calendar year exceeds
 the sum of 9500 \$17500 \$1,000;

14 (2) any individual or employing unit which acquired
15 the organization, trade, or business or substantially all of
16 the assets thereof of another which at the time of such
17 acquisition was an employer subject to this chapter;

18 (3) any individual or employing unit which acquired 19 the organization, trade, or business or substantially all 20 the assets thereof of another employing unit not an employer 21 subject to this chapter and which, if subsequent to such 22 acquisition it were treated as a single unit with such other 23 employing unit, would be an employer under subsection (1) of 24 this section;

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(4) any employing unit not an employer by reason of

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1 any other subsection of this section for which, within 2 either the current or preceding calendar year, service is or was performed with respect to which such employing unit is 3 liable for any federal tax against which credit may be 4 5 taken for contributions paid into a state unemployment fund 6 or an employing unit which, as a condition for approval of 7 this chapter for full tax credit against the tax imposed by 8 the Federal Unemployment Tax Act, is required pursuant to 9 such act to be an employer under this chapter;

10 (5) any employing unit which, having become an
11 employer under subsection (1), (2), (3), or (4) has not,
12 under 39-51-1101, ceased to be an employer subject to this
13 chapter; or

14 (6) for the effective period of its election pursuant
15 to 39-51-1102, any other employing unit which has elected to
16 become fully subject to this chapter."

17 Section 3. Section 39-51-204, MCA, is amended to read:

18 "39-51-204. Exclusions from definition of employment.

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

20 (a) agricultural labor, except as provided in 21 39-51-203(8);

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

25 (c) service performed as an officer or member of the

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crew of a vessel on the navigable waters of the United 1 2 States;

(d) service performed by an individual in the employ 3 4 of his son, daughter, or spouse and service performed by a 5 child under the age of 21 in the employ of his father or mother; 6

7 (e) service performed in the employ of any other state or its political subdivisions or of the United States 8 government or of an instrumentality of any other state or 9 states or their political subdivisions or of the United 10 11 States, except that national banks organized under the 12 national banking law shall not be entitled to exemption 13 under this subsection and shall be subject to this chapter the same as state banks, provided that such service is 14 15 excluded from employment as defined in the Federal 16 Unemployment Tax Act by section 3306(c)(7) of that act;

17 (f) service with respect to which unemployment 18 insurance is payable under an unemployment insurance system 19 established by an act of congress, provided that the 20 department must enter into agreements with the proper 21 agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana 22 Administrative Procedure Act for the adoption of rules, to 23 24 provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, 25

acquired rights to unemployment insurance under such act of 1 congress or who have, after acquiring potential rights to 2 unemployment insurance under such act of congress, acquired 3 4 rights to benefits under this chapter;

5 (g) services performed in the deliverv anđ distribution of newspapers or shopping news from house to 6 house and business establishments by an individual under the 7 age of 18 years, but not including the delivery or 8 distribution to any point or points for subsequent delivery 9 10 or distribution;

11 (h) services performed by real estate, securities, and 12 insurance salesmen paid solely by commissions and without 13 guarantee of minimum earnings;

(i) service performed in the employ of a school, 14 15 college, or university if such service is performed by a 16 student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of 17 18 such a student if such spouse is advised, at the time such 19 spouse commences to perform such service, that the 20 employment of such spouse to perform such service is provided under a program to provide financial assistance to 21 22 such student by such school, college, or university and such employment will not be covered by any program of 23 24 unemployment insurance;

25 (j) service performed by an individual under--the--age

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of = 22 who is enrolled at a nonprofit or public educational 1 2 institution, which normally maintains a regular faculty and 3 curriculum and normally has a regularly organized body of 4 students in attendance at the place where its educational 5 activities are carried on, as a student in a full-time 6 program taken for credit at such institution which combines 7 academic instruction with work experience if such service is 8 an integral part of such program and such institution has so 9 certified to the employer, except that this subsection shall 10 not apply to service performed in a program established for 11 or on behalf of an employer or group of employers;

12 (k) service performed in the employ of a hospital if13 such service is performed by a patient of the hospital;

14 (1) casual labor not in the course of an employer's 15 trade or business performed in any calendar quarter, unless 16 the cash remuneration paid for such service is \$50 or more 17 and such service is performed by an individual who is 18 regularly employed by such employer to perform such service. 19 <u>"Regularly employed" means the services are performed during</u> 20 at least 24 days in the same quarter.

21 (2) "Employment" does not include elected public22 officials.

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

25 (a) in the employ of a church or convention or

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association of churches or an organization which is operated
 primarily for religious purposes and which is operated,
 supervised, controlled, or principally supported by a church
 or convention or association of churches;

5 (b) by a duly ordained, commissioned, or licensed 6 minister of a church in the exercise of his ministry or by a 7 member of a religious order in the exercise of duties 8 required by such order;

9 (c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977; 10 (d) in a facility conducted for the purpose of 11 carrying out a program of rehabilitation for individuals 12 whose earning capacity is impaired by age or physical or 13 14 mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or 15 mental capacity, cannot be readily absorbed in the 16 competitive labor market by an individual receiving such 17 rehabilitation or remunerative work; 18

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

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

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1 Section 4. Section 39-51-301, MCA, is amended to read: 2 "39-51-301. Administration -- duties and powers of 3 department. (1) It shall be the duty of the department to 4 administer this chapter and it shall have power and 5 authority to adopt, amend, or rescind such rules, to employ 6 such persons, make such expenditures, require such reports, 7 make such investigations, and take such other action as it 8 deems necessary or suitable to that end. Such-rules-shall-be 9 effective-upon-publication-in-the-manner;--not--inconsistent 10 with--the--provisions--of-this-chapter;-which-the-department shall-prescribe-11

(2) The department shall determine its own
organization and methods of procedure in accordance with the
provisions of this chapter and shall have an official seal,
which shall be judicially noticed.

16 (3) Whenever the department believes that a change in 17 contribution or benefit rates will become necessary to 18 protect the solvency of the fund, it shall promptly so 19 inform the governor and the legislature and make 20 recommendations with respect thereto.

(4) The department and the board may issue subpoenas
 and compel testimony and the production of evidence,
 including books and records, in regard to any investigation
 or proceeding under this chapter."

25 Section 5. Section 39-51-302, MCA, is amended to read:

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1 "39-51-302. Regulations---and---general---and--special 2 Administrative rules. General--and--special--rules--may--be 3 adopted7--amended7-or-rescinded-by-the-department-only-after 4 public-hearing-or-opportunity-to-be-heard-thereony-of--which proper--notice--has--been--given--General-rules-shall-become 5 6 effective-10-days-after-filing-with-the-secretary--of--state 7 and--publication--in--one--or--more--newspapers--of--general 8 circulation--in--this--state.--Special--rules--shall--become 9 effective--10--days--after-notification-to-or-mailing-to-the 10 last-known-address-of-the-individuals-or--concerns--affected 11 thereby---Regulations--may-be-adopted-amended-or-rescinded 12 by-the-department-and-shall-become-effective-in--the--manner 13 and--at-the-time-prescribed-by-law. The department may adopt 14 procedural and substantive rules necessary to implement this 15 chapter." 16 Section 6. Section 39-51-304, MCA, is amended to read: 17 "39-51-304. Personnel. (1)---Except---as---otherwise 18 provided7--the--department-is-authorized-to-appoint7-fix-the 19 compensation7-and-prescribe-the-duties-and--powers--of--such 20 officers7-accountants7-attorneys7-experts7-and-other-persons 21 as--may--be-necessary-in-the-performance-of-its-duties-under 22 this-chapter---The--department--may--delegate--to--any--such 23 persons--such-power-and-authority-as-it-considers-reasonable

25 and--may-in-its-discretion-bond-any-person-handling-money-or

24

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and-proper-for-the-effective-administration-of-this--chapter

signing-checks-hereunder-1 2 (2)--No-person-who-is-an-officer-or-committee-member-of 3 any-political-party--organization--or--who--holds--or--is--a candidate-for-any-public-office-may-be-appointed-or-employed 4 5 under-this-chapter-(3) The department shall hire personnel to administer б 7 this chapter in accordance with merit system principles adopted by the merit---system--council department of R 9 administration." 10 Section 7. Section 39-51-305, MCA, is amended to read: 11 "39-51-305. Department to appoint appeals referees. To 12 hear and decide disputed claims, the department shall 13 appoint such impartial salaried appeals referees as are necessary for the proper administration of this chapter, 14 consisting-of-salaried-examiners-selected in accordance with 15 39-51-304. No person shall participate on behalf of the 16 17 department in any case in which he is an interested party. The department may designate alternates to serve in the 18 absence or disqualification of an appeals referee." 19 Section 8. Section 39-51-402, MCA, is amended to read: 20 21 "39-51-402. Unemployment insurance fund -- state treasurer-ex-officio custodian -- accounts and deposits. (1) 22

23 The state--treasurer commissioner of labor and industry is
24 the ex officio treasurer and custodian of the unemployment
25 insurance fund and shall administer such fund in accordance

with the-directions-of-the-department-and--shall--issue--his
 warrants--upon-it-in-accordance-with-such-regulations-as-the
 department-shall-prescribe this chapter. He shall maintain
 within the fund three separate accounts:

(a) a clearing account;

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(b) an unemployment trust fund account; and

(c) a benefit account.

8 (2) All money payable to the unemployment insurance 9 fund, upon receipt thereof by the department, must be 10 forwarded -- to-the-treasurer-who-shall immediately deposit-it 11 deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account upon 12 13 warrants-issued-by-the-treasurer-under-the-direction-of--the 14 department. After clearance thereof, all other money in the clearing account must be immediately deposited with the 15 16 secretary of the treasury of the United States to the credit 17 of the account of this state in the unemployment trust fund, 18 established and maintained pursuant to section 904 of the 19 Social Security Act, as amendedy-any-provision-of-law-in 20 this-state-relating-to-the-deposit,-administration,-release, or-disbursement-of-money-in-the--possession--or--custody--of 21 22 this-state-to-the-contrary-notwithstanding.

23 (3) The benefit account consists of all money
24 requisitioned for the payment of benefits from this state's
25 account in the unemployment trust fund.

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1 (4) Except as herein otherwise provided, money in the 2 clearing and benefit accounts may be deposited by--the 3 treasurer,--under--the--direction--of-the-department, in any 4 bank or public depository in which general funds of the 5 state may be deposited, but no public deposit insurance 6 charge or premium may be paid out of the unemployment 7 insurance fund.

8 (5)--The---treasurer---shall---give---a--separate--bond 9 conditioned-upon-the-faithful-performance-of-his--duties--as 10 custodian--of--the--unemployment-insurance-fund-in-an-amount 11 fixed-by-the-department-and-in-a-form-prescribed-by--law--or 12 approved--by--the--attorney--general.--Premiums-for-the-bond 13 shall-be-paid-from-the-unemployment-insurance-administration 14 account."

15 Section 9. Section 39-51-1103, MCA, is amended to 16 read:

17 "39-51-1103. Contributions by employers required --18 payments in lieu thereof authorized for certain employers. 19 (1) Contributions shall accrue and become payable by each 20 employer for each calendar year in which he is subject to 21 this chapter with respect to wages, as defined in 22 39-51-201+197, paid for employment, as defined in this 23 chapter, occurring during such calendar year.

24 (2) Such contributions shall become due and be paid by25 each employer to the department for the fund in accordance

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with such regulations as the department may prescribe and
 shall not be deducted in whole or in part from the wages of
 individuals in his employ.

4 (3) In the payment of any contributions, a fractional 5 part of a cent shall be disregarded unless it amounts to 6 one-half cent or more, in which case it shall be increased 7 to 1 cent.

8 (4) Nonprofit organizations defined in section
9 501(c)(3) of the federal Internal Revenue Code and which are
10 exempt from tax under section 501(a) of such code may elect
11 to make payments in lieu of contributions.

12 (5) The state and its political subdivisions,
13 effective January 1, 1977, may elect to make payments in
14 lieu of contributions or pay under a special contributions
15 plan established for governmental entities only."

16 Section 10. Section 39-51-1109, MCA, is amended to 17 read:

"39-51-1109. Contribution Tax appeals. Any person 18 aggrieved by any decision, determination, or redetermination 19 20 of the department involving contribution liability, 21 contribution rate, application for refund, or the charging 22 of benefit payments to employers making payment in lieu of contributions is entitled to a review by-the-department-or 23 its-authorized-representative7-hereinafter-referred-to-as--a 24 deputy---The--decision--of--the--deputy--is--considered--the 25

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1	destsion-of-the-departmentThedepartmentorthedeputy
2	conductingthereviewmayrefer-the-matter-to-an-appeals
3	referee,-may-decide-the-application-for-review-on-thebasis
4	ofsuchfactsandinformation-as-may-be-obtained;-or-may
5	hear-argument-to-secure-further-factsAftersuchreview7
6	noticeof-the-decision-must-be-given-to-the-employing-unit;
7	Such-decision-made-pursuant-to-such-review-is-considered-the
8	final-decision-of-the-department-unless-theemployingunit
9	orenyother-such-interested-partywithin-5-calendar-days
10	after-delivery-of-such-notificationorwithin7calendar
11	daysaftersuchnotification-was-mailed-to-his-last-know:
12	address;-files-an-appeal-fromthisdecision;Suchappea
13	willbereferredto-an-appeals-referee-who-shall-make-his
14	decisionswithrespecttheretoinaccordancewiththe
15	procedureprescribed-in-39-51-2403 in accordance with Title
16	2, chapter 4, parts 6 and 7."

17 Section 11. Section 39-51-1305, MCA, is amended to 18 read:

19 "39-51-1305. Priority of payment of contributions due 20 under legal dissolutions or distributions. (1) In the event 21 of any distribution of an employer's assets pursuant to an 22 order of any court under the laws of this state, including 23 any receivership, assignment for benefit of creditors, 24 adjudicated insolvency, composition, or similar proceeding, 25 contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages
 of not more than \$250 to each claimant earned within 6
 months of the commencement of the proceeding.

4 t2)--In--the--event--of--an--employer's-adjudication-in 5 bankruptcy7--judicially--confirmed--extension--proposal7--or 6 composition--under-the-Pederal-Bankruptcy-Acty-contributions 7 then-or-thereafter-duc-shall--be--entitled--to--priority--of 8 payment-as-a-debt-due-the-sovereign-power-as-provided-by-the 9 Bankruptey--Act--of-June-227-1938-(Chap:-575-52-Stat:-840);" 10 Section 12. Section 39-51-2104, MCA, is amended to 11 read:

"39-51-2104. General benefit eligibility conditions.
An unemployed individual is eligible to receive benefits for
any week of total unemployment within his benefit year only
if the department finds that:

16 (1) he has registered--for-work filed a claim at and 17 thereafter has continued to report at an employment office in accordance with such regulation as the department may 18 prescribe, except that the department may, by regulation, 19 20 prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this 21 chapter, an unemployed individual may register file a claim 22 23 and report for work by mail or through other governmental 24 agencies:

25 (2)--he--has--made--a--claim-for-benefits-in-accordance

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1 with-the-provisions-of-39-51-2401;

2 (3)(2) he is able to work and is available for work and is seeking work; provided, however, that no claimant is 3 considered ineligible in any week of unemployment for 4 failure to comply with the provisions of this subsection if 5 such failure is due to an illness or disability which occurs 6 after he has registered for work and no suitable work has 7 been offered to such claimant after the beginning of such 8 illness or disability; 9

(4)(3) prior to any week for which he claims benefits 10 he has been totally unemployed for a waiting period of 1 11 week. However, if claimant's benefit year expires during a 12 period of compensable unemployment, claimant will continue 13 to receive weekly benefits in a new benefit year, if 14 otherwise eligible, without interruption to serve the 15 waiting week for the new benefit year but will thereafter be 16 required to serve the waiting week before receiving benefits 17 during subsequent unemployment in the new benefit year. No 18 week is counted as a week of total unemployment for the 19 20 purposes of this subsection:

(a) if benefits have been paid with respect thereto;
(b) unless the individual was eligible for benefits
with respect thereto;

24 (c) unless it occurs within the benefit year of the 25 claimant;

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(d) unless it occurs after benefits first could become
 payable to any individual under this chapter."

3 Section 13. Section 39-51-2307, MCA, is amended to 4 read:

5 "39-51-2307. Disgualification because of student 6 status. (1) Effective April 1, 1977, an individual shall be 7 disgualified for benefits during the school year (within the 8 autumn, winter, and spring seasons of the year) or the 9 vacation periods within such school year or during any 10 prescribed school term if claimant is a student regularly 11 attending an established educational institution.

12 (2) Notwithstanding any other provisions in this 13 section, no otherwise eligible individual shall be denied 14 benefits for any week because he is in training approved by 15 the department, nor shall such individual be denied benefits 16 with respect to any week in which he is in training approved 17 by the department by reason of the application of provisions 18 in 39-51-2304 or the application of provisions in 19 39-51-2104+3+(2)."

20 Section 14. Section 39-51-2410, MCA, is amended to 21 read:

"39-51-2410. Finality of board's decision -- judicial
review. (1) Any decision of the board in the absence of an
appeal therefrom as herein provided shall become final 30
days after the date of notification or mailing thereof,

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1 except in the case of the department when such decision 2 becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any 3 party claiming to be aggrieved thereby has exhausted his 4 5 remedies before the board. The department shall be deemed to б be a party to any judicial action involving any such 7 decision and may be represented in any such action by an 8 attorney employed by the department or at the department's 9 request, by the attorney general.

10 (2) Within 30 days after the date of notification or 11 mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an 12 action in the district court of the county in which said 13 14 party resides and in which action any other party to the 15 proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which 16 17 shall state the grounds upon which a review is sought, shall 18 be served upon the commissioner of labor and industry or-his designee--and-such-service-shall-be-deemed-completed-service 19 20 on-all-parties,-but-there-shall-be-left-with--the--party--so 21 served---as--many--copies--of--the--petition--as--there--are 22 defendants-and-the-department-shall-forthwith-mail-one--such 23 copy-to-each-such-defendant and all other interested parties in the manner provided in the Montana Rules of Civil 24 25 Procedure.

1 (3) With its answer, the department shall certify and 2 file with said court all documents and papers and a 3 transcript of all testimony taken in the matter, together 4 with the board's findings of fact and decision. The board 5 may also in its discretion certify to such court questions 6 of law involved in any decision by it.

7 (4) Whenever the department seeks review of a decision
8 of the board, all interested parties shall be served with a
9 copy of its petition together with all documents filed with
10 the court.

(5) In any judicial proceeding under 39-51-2406 11 through 39-51-2410, the findings of the board as to the 12 facts, if supported by evidence and in the absence of fraud, 13 shall be conclusive and the jurisdiction of said court shall 14 be confined to questions of law. Such action and the 15 questions so certified shall be heard in a summary manner 16 and shall be given precedence over all other civil cases 17 except cases arising under the workers' compensation law of 18 19 this state.

i6) An appeal may be taken from the decision of the
district court to the supreme court of Montana in the same
manner, but not inconsistent with the provisions of this
chapter, as is provided in civil cases. It shall not be
necessary in any judicial proceeding under this section to
enter exceptions to the rulings of the board and no bond

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1	shall be required for entering such appeal. Upon the final
2	determination of such judicial proceeding, the department
3	shall enter an order in accordance with such determination."
4	NEW SECTION. SECTION 15. COLLECTION OF BENEFIT
5	OVERPAYMENTS. A PERSON WHO RECEIVES BENEFITS NOT AUTHORIZED
6	BY THIS CHAPTER SHALL REPAY TO THE DEPARTMENT, EITHER
7	DIRECTLY OR AS AUTHORIZED BY THE DEPARTMENT, BY OFFSET OF
8	FUTURE BENEFITS TO WHICH HE MAY BE ENTITLED, OR BY A
9	COMBINATION OF BOTH SUCH METHODS, A SUM EQUAL TO THE AMOUNT
10	RECEIVED BY HIM UNLESS THE DEPARTMENT FINDS THAT THE
11	BENEFITS WERE RECEIVED THROUGH NO FAULT OF THE PERSON AND
12	THE RECOVERY OF SUCH BENEFITS WOULD BE AGAINST EQUITY AND
13	GOOD CONSCIENCE.
14	NEW SECTION. Section 16. Extension of authority. Any
15	existing authority of the department of labor and industry
16	to make rules on the subject of the provisions of this act
17	is extended to the provisions of this act.
18	NEW SECTION. Section 17. Effective date. This act is

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19 effective on passage and approval.

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1	STATEMENT OF INTENT
2	HOUSE BILL 428
3	House Business and Labor Committee
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5 A statement of intent is needed for this bill because 6 section 5 amends 39-51-302 to clarify, modernize, and make 7 more direct the existing grant of authority to the 8 department of labor and industry to adopt unemployment compensation rules, and section 6 amends 39-51-304 to 9 substitute the department of administration for the merit 10 system council as the agency adopting merit system 11 12 principles to be followed by the department of labor and 13 industry in hiring personnel to administer the unemployment 14 compensation law.

Both amendments are for purposes of coordinating
existing rulemaking authority with prior changes in the law.
Each department should continue its current rules in effect
and continue to adopt rules in the areas in which it is
already adopting rules.

REFERENCE BILL HB 428



HOUSE BILL NO. 428 1 1 2 INTRODUCED BY MILES 2 BY REQUEST OF THE DEPARTMENT 3 3 4 OF LABOR AND INDUSTRY 4 5 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 6 UNEMPLOYMENT INSURANCE LAW; AMENDING SECTIONS 39-51-201, 7 7 39-51-202, 39-51-204, 39-51-301, 39-51-302, 39-51-304, 8 8 39-51-305, 39-51-402, 39-51-1103, 39-51-1109, 39-51-1305, 9 9 10 39-51-2104, 39-51-2307, AND 39-51-2410, MCA; AND PROVIDING 10 AN IMMEDIATE EFFECTIVE DATE." 11 11 12 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 13 Section 1. Section 39-51-201, MCA, is amended to read: 14 14 "39-51-201. General definitions. As used in this 15 15 16 chapter, unless the context clearly requires otherwise, the 16 following definitions apply: 17 17 (1)--The--word--#administrator#--refers--to--a---person 18 18 appointed--by--the--commissioner--of--labor--and-industry-to 19 19

20 direct-and-administer-the-unemployment--insurance--laws--and 21 federal----laws----falling----within---the---administrator's 22 jurisdiction-

23 (2)(1) "Annual payroll" means the total amount of 24 wages paid by an employer, regardless of the time of 25 payment, for employment during a calendar year. (3)--"Annual-total-payroll"-means-the-total-of-the-four
quarters-of-total-payrolls--of--an--employer--preceding--the
computation-date-as-fixed-herein-

4 (4)(2) "Base period" means the first four of the last 5 five completed calendar quarters immediately preceding the 6 first day of an individual's benefit year. However, in the 7 case of a combined-wage claim pursuant to the arrangement 8 approved by the secretary of labor of the United States, the 9 base period shall be that applicable under the unemployment 10 law of the paying state. For an individual who fails to 11 meet the qualifications of 39-51-2105 due to a temporary 12 total disability as defined in 39-71-116 or a similar 13 statute of another state or the United States, the base 14 period means the first four quarters of the last five 15 quarters preceding the disability if a claim for 16 unemployment benefits is filed within 18 months of the 17 individual's last employment.

18 (5)(3) "Benefits" means the money payments payable to 19 an individual, as provided in this chapter, with respect to 20 his unemployment.

21 (6)(4) "Benefit year", with respect to any individual, 22 means the 52 consecutive-week period beginning with the 23 first day of the calendar week in which such individual 24 files a valid claim for benefits, except that the benefit 25 year shall be 53 weeks if filing a new valid claim would



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1 result in overlapping any guarter of the base year of a 2 previously filed new claim. A subsequent benefit year may 3 not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim 4 pursuant to the arrangement approved by the secretary of 5 labor of the United States, the base period is the period б 7 applicable under the unemployment law of the paying state. 8 (7)(5) "Board" means the board of labor appeals 9 provided for in Title 2, chapter 15, part 17.

10 (0)(6) "Calendar quarter" means the period of 3
11 consecutive calendar months ending on March 31, June 30,
12 September 30, or December 31.

13 (9)(7) "Contributions" means the money payments to the 14 state unemployment insurance fund required by this chapter. 15 (10)(8) "Department" means the department of labor and 16 industry provided for in Title 2, chapter 15, part 17.

17 (11)(9) "Employing unit" means any individual or 18 organization, including the state government, any of its 19 political subdivisions or instrumentalities, anv 20 partnership, association, trust, estate, joint-stock 21 company, insurance company, or corporation, whether domestic 22 or foreign, or the receiver, trustee in bankruptcy, trustee 23 or successor thereof, or the legal representative of a 24 deceased person which has or subsequent to January 1, 1936, 25 had in its employ one or more individuals performing

1 services for it within this state, except as provided under 2 subsections (8) and (9) of 39-51-203. All individuals 3 performing services within this state for any employing unit 4 which maintains two or more separate establishments within 5 this state are considered to be employed by a single б employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the 7 8 work of any agent or employee of an employing unit is deemed 9 to be employed by such employing unit for the purposes of 10 this chapter, whether such individual was hired or paid 11 directly by such employing unit or by such agent or 12 employee, provided the employing unit has actual or 13 constructive knowledge of the work.

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

21 (13)(11) "Fund" means the unemployment insurance fund 22 established by this chapter to which all contributions and 23 payments in lieu of contributions are required and from 24 which all benefits provided under this chapter shall be 25 paid.

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1 (14)(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which 2 an individual has been convicted in a criminal court or has 3 admitted or conduct which demonstrates a flagrant and wanton 4 5 disregard of and for the rights or title or interest of a 6 fellow employee or his employer.

7 +15+(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital. 8 9 (14) (a) "Institution of higher education", for the purposes of this part, means an educational institution 10 11 which:

12 (i) admits as regular students only individuals having 13 a certificate of graduation from a high school or the 14 recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a 15 16 program of education beyond high school;

17 (iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program 18 which is acceptable for full credit toward such a degree, a 19 20 program of postgraduate or postdoctoral studies, or a of training to prepare students for gainful 21 program 22 employment in a recognized occupation; and

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

(b) Notwithstanding any of the foregoing provisions of 24 this subsection, all colleges and universities in this state 25

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are institutions of higher education for purposes of this 2 part.

3 {17}(15) "State" includes, in addition to the states of 4 the United States of America, the District of Columbia, 5 Puerto Rico, the Virgin Islands, and the Dominion of Canada. 6 ti0;(16) "Unemployment insurance administration fund" 7 means the unemployment insurance administration fund 8 established by this chapter from which administrative 9 expenses under this chapter shall be paid.

10 (19)(17) (a) "Wages" means all remuneration payable for 11 personal services, including commissions and bonuses, and 12 the cash value of all remuneration payable in any medium 13 other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of 14 remuneration payable in any medium other than cash shall be 15 16 estimated and determined in accordance with rules prescribed by the department. 17

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

19 (i) the amount of any payment made to or on behalf of 20 an employee by an employer on account of:

- 21 (A) retirement;
- 22 (B) sickness or accident disability;
- 23 (C) medical and hospitalization expenses in connection
- 24 with sickness or accident disability; or
- 25 (D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the

3 direction and request of such county welfare office.

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4 (20)(18) "Week" means a period of 7 consecutive
5 calendar days ending at midnight on Saturday.

6 (21)(19) An individual's "weekly benefit amount" means
7 the amount of benefits he would be entitled to receive for 1
8 week of total unemployment."

9 Section 2. Section 39-51-202, MCA, is amended to read:
10 "39-51-202. Employer defined. "Employer" means:

11 (1) any employing unit whose total annual payroll 12 within either the current or preceding calendar year exceeds 13 the sum of \$500 \$1,7500 \$1,000;

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

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

25 (4) any employing unit not an employer by reason of

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1 any other subsection of this section for which, within 2 either the current or preceding calendar year, service is or 3 was performed with respect to which such employing unit is 4 liable for any federal tax against which credit may be 5 taken for contributions paid into a state unemployment fund 6 or an employing unit which, as a condition for approval of 7 this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to 8 9 such act to be an employer under this chapter;

10 (5) any employing unit which, having become an 11 employer under subsection (1), (2), (3), or (4) has not, 12 under 39-51-1101, ceased to be an employer subject to this 13 chapter; or

14 (6) for the effective period of its election pursuant 15 to 39-51-1102, any other employing unit which has elected to 16 become fully subject to this chapter."

17 Section 3. Section 39-51-204, MCA, is amended to read:

18 "39-51-204. Exclusions from definition of employment.

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

20 (a) agricultural labor, except as provided in 21 39-51-203(8);

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

25 (c) service performed as an officer or member of the

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crew of a vessel on the navigable waters of the United
 States;

3 (d) service performed by an individual in the employ
4 of his son, daughter, or spouse and service performed by a
5 child under the age of 21 in the employ of his father or
6 mother;

(e) service performed in the employ of any other state 7 8 or its political subdivisions or of the United States government or of an instrumentality of any other state or 9 states or their political subdivisions or of the United 10 11 States, except that national banks organized under the 12 national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter 13 the same as state banks, provided that such service is 14 excluded from employment as defined in the Federal 15 Unemployment Tax Act by section 3306(c)(7) of that act; 16

(f) service with respect to which unemployment 17 18 insurance is payable under an unemployment insurance system established by an act of congress, provided that the 19 department must enter into agreements with the proper 20 21 agencies under such act of congress, which agreements shall 22 become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to 23 24 provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, 25

acquired rights to unemployment insurance under such act of
 congress or who have, after acquiring potential rights to
 unemployment insurance under such act of congress, acquired
 rights to benefits under this chapter;

5 (g) services performed in the delivery and 6 distribution of newspapers or shopping news from house to 7 house and business establishments by an individual under the 8 age of 18 years, but not including the delivery or 9 distribution to any point or points for subsequent delivery 10 or distribution;

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

14 (i) service performed in the employ of a school, college, or university if such service is performed by a 15 student who is enrolled and is regularly attending classes 16 17 at such school, college, or university or by the spouse of 18 such a student if such spouse is advised, at the time such spouse commences to perform such service, that the 19 employment of such spouse to perform such service is 20 21 provided under a program to provide financial assistance to 22 such student by such school, college, or university and such employment will not be covered by any program of 23 24 unemployment insurance;

25 (j) service performed by an individual under--the--age

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of --22 who is enrolled at a nonprofit or public educational 1 institution, which normally maintains a regular faculty and 2 curriculum and normally has a regularly organized body of 3 students in attendance at the place where its educational 4 5 activities are carried on, as a student in a full-time program taken for credit at such institution which combines 6 7 academic instruction with work experience if such service is an integral part of such program and such institution has so 8 9 certified to the employer, except that this subsection shall not apply to service performed in a program established for 10 11 or on behalf of an employer or group of employers;

12 (k) service performed in the employ of a hospital if13 such service is performed by a patient of the hospital;

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

19 "Regularly employed" means the services are performed during

20 at least 24 days in the same quarter.

21 (2) "Employment" does not include elected public 22 officials.

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

25 (a) in the employ of a church or convention or

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association of churches or an organization which is operated
 primarily for religious purposes and which is operated,
 supervised, controlled, or principally supported by a church
 or convention or association of churches;

5 (b) by a duly ordained, commissioned, or licensed 6 minister of a church in the exercise of his ministry or by a 7 member of a religious order in the exercise of duties 8 required by such order;

9 (c) in the employ of a school which is not an 10 institution of higher education, prior to December 31, 1977; 11 (d) in a facility conducted for the purpose of 12 carrying out a program of rehabilitation for individuals 13 whose earning capacity is impaired by age or physical or 14 mental deficiency or injury or providing remunerative work 15 for individuals who, because of their impaired physical or 16 mental capacity, cannot be readily absorbed in the 17 competitive labor market by an individual receiving such 18 rehabilitation or remunerative work;

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

24 (f) for a state prison or other state correctional or25 custodial institution by an inmate of that institution."

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1 Section 4. Section 39-51-301, MCA, is amended to read: 2 "39-51-301. Administration -- duties and powers of department. (1) It shall be the duty of the department to 3 administer this chapter and it shall have power and 4 authority to adopt, amend, or rescind such rules, to employ 5 6 such persons, make such expenditures, require such reports, 7 make such investigations, and take such other action as it deems necessary or suitable to that end. Such-rules-shall-be 8 9 effective-upon-publication-in-the-manner;--not--inconsistent with--the--provisions--of-this-chapter;-which-the-department 10 11 shall-prescriber

12 (2) The department shall determine its own 13 organization and methods of procedure in accordance with the 14 provisions of this chapter and shall have an official seal, 15 which shall be judicially noticed.

16 (3) Whenever the department believes that a change in
17 contribution or benefit rates will become necessary to
18 protect the solvency of the fund, it shall promptly so
19 inform the governor and the legislature and make
20 recommendations with respect thereto.

21 (4) The department and the board may issue subpoenas 22 and compel testimony and the production of evidence, 23 including books and records, in regard to any investigation 24 or proceeding under this chapter."

25 Section 5. Section 39-51-302, MCA, is amended to read:

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1 "39-51-302. Regulations---and---general---and--special 2 Administrative rules. General--and--special--rules--may--be 3 adoptedy -- amendedy -or - rescinded - by - the - department - only - after 4 public-hearing-or-opportunity-to-be-heard-thereony-of--which 5 proper--notice--has--been--given--General-rules-shall-become 6 effective-10-days-after-filing-with-the-secretary--of--state 7 and--publication--in--one--or--more--newspapers--of--general 8 circulation--in--this--state---Special--rules--shall--become 9 effective--10--days--after-notification-to-or-mailing-to-the 10 last-known-address-of-the-individuals-or--concerns--affected 11 thereby --- Regulations -- may-be-adopted -- amended -- or -rescinded 12 by-the-department-and-shall-become-effective-in--the--manner 13 and--at-the-time-prescribed-by-law+ The department may adopt 14 procedural and substantive rules necessary to implement this 15 chapter." 16 Section 6. Section 39-51-304, MCA, is amended to read: "39-51-304. Personnel. (1)---Except---as---otherwise 17 provided7--the--department-is-authorized-to-appoint7-fix-the 18 19 compensation, and prescribe the duties and -powers -of -- such 20 officers,-accountants,-attorneys,-experts,-and-other-persons

21 as--may--be-necessary-in-the-performance-of-its-duties-under 22 this-chapter--The--department--may--delegate--to--any--such 23 persons--such-power-and-authority-as-it-considers-reasonable 24 and-proper-for-the-effective-administration-of-this--chapter

25 and--may-in-its-discretion-bond-any-person-handling-money-or

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1 signing-checks-hereunder-

2 (2)--No-person-who-is-an-officer-or-committee-member-of any-political-party--organization--or--who--holds--or--is--a candidate-for-any-public-office-may-be-appointed-or-employed under-this-chapter-

6 (3) The department shall hire personnel to administer
7 <u>this chapter</u> in accordance with merit system principles
8 adopted by the merit---system--council department of
9 administration."

Section 7. Section 39-51-305, MCA, is amended to read: 10 11 "39-51-305. Department to appoint appeals referees. To 12 hear and decide disputed claims, the department shall 13 appoint such impartial salaried appeals referees as are 14 necessary for the proper administration of this chapter, consisting-of-salaried-examiners-selected in accordance with 15 39-51-304. No person shall participate on behalf of the 16 17 department in any case in which he is an interested party. 18 The department may designate alternates to serve in the absence or disgualification of an appeals referee." 19

Section 8. Section 39-51-402, MCA, is amended to read: "39-51-402. Unemployment insurance fund -- state treasurer-ex-officio custodian -- accounts and deposits. (1) The state--treasurer commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer such fund in accordance

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with the-directions-of-the-department-and--shall--issue--his
 warrants--upon-it-in-accordance-with-such-regulations-as-the
 department-shall-prescribe this chapter. He shall maintain
 within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance 8 9 fund, upon receipt thereof by the department, must be 10 forwarded--to-the-treasurer-who-shall immediately deposit-it 11 deposited in the clearing account. Refunds payable pursuant 12 to 39-51-1110 may be paid from the clearing account upon 13 warrants-issued-by-the-treasurer-under-the-direction-of--the 14 department. After clearance thereof, all other money in the .15 clearing account must be immediately deposited with the 16 secretary of the treasury of the United States to the credit 17 of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the 18 19 Social Security Act, as amended,-any-provision-of-law-in 20 this-state-relating-to-the-deposity-administrationy-releasey or-disbursement-of-money-in-the--possession--or--custody--of 21 22 this-state-to-the-contrary-notwithstanding.

23 (3) The benefit account consists of all money
24 requisitioned for the payment of benefits from this state's
25 account in the unemployment trust fund.

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1 (4) Except as herein otherwise provided, money in the 2 clearing and benefit accounts may be deposited by--the 3 treasurer,--under--the--direction--of-the-department, in any 4 bank or public depository in which general funds of the 5 state may be deposited, but no public deposit insurance 6 charge or premium may be paid out of the unemployment 7 insurance fund.

8 (5)--The---treasurer---shall---give---a--separate--bond 9 conditioned-upon-the-faithful-performance-of-his--duties--as 10 custodian--of--the--unemployment-insurance-fund-in-an-amount 11 fixed-by-the-department-and-in-a-form-prescribed-by--law--or 12 approved--by--the--attorney--general---Premiums-for-the-bond 13 shall-be-paid-from-the-unemployment-insurance-administration 14 account.

15 Section 9. Section 39-51-1103, MCA, is amended to 16 read:

17 "39-51-1103. Contributions by employers required ---18 payments in lieu thereof authorized for certain employers. 19 (1) Contributions shall accrue and become payable by each 20 employer for each calendar year in which he is subject to 21 this chapter with respect to wages, as defined in 22 39-51-201(±9), paid for employment, as defined in this 23 chapter, occurring during such calendar year.

24 (2) Such contributions shall become due and be paid by25 each employer to the department for the fund in accordance

with such regulations as the department may prescribe and
 shall not be deducted in whole or in part from the wages of
 individuals in his employ.

4 (3) In the payment of any contributions, a fractional 5 part of a cent shall be disregarded unless it amounts to 6 one-half cent or more, in which case it shall be increased 7 to 1 cent.

8 (4) Nonprofit organizations defined in section
9 501(c)(3) of the federal Internal Revenue Code and which are
10 exempt from tax under section 501(a) of such code may elect
11 to make payments in lieu of contributions.

12 (5) The state and its political subdivisions,
13 effective January 1, 1977, may elect to make payments in
14 lieu of contributions or pay under a special contributions
15 plan established for governmental entities only."

16 Section 10. Section 39-51-1109, MCA, is amended to 17 read:

"39-51-1109. Contribution Tax appeals. Any person 18 aggrieved by any decision, determination, or redetermination 19 20 of the department involving contribution liability, 21 contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of 22 23 contributions is entitled to a review by-the-department-or 24 its-authorized-representativez-hereinafter-referred-to-as--a deputy---The--decision--of--the--deputy--is--considered--the 25

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decision-of-the-department--The--department--or--the--deputy 1 conducting--the--review--may--refer-the-matter-to-an-appeals 2 referee,-may-decide-the-application-for-review-on-the--basis 3 4 of--such--facts--and--information-as-may-be-obtained;-or-may 5 hear-argument-to-secure-further-facts--After--such--review; notice--of-the-decision-must-be-given-to-the-employing-unit; 6 Such-decision-made-pursuant-to-such-review-is-considered-the 7 final-decision-of-the-department-unless-the--employing--unit 8 9 or--any--other-such-interested-party--within-5-calendar-days 10 after-delivery-of-such-notification--or--within--7--calendar 11 days--after--such--notification-was-mailed-to-his-last-known 12 address;-files-an-appeal-from--this--decision---Such--appeal 13 will--be--referred--to-an-appeals-referee-who-shall-make-his 14 decisions--with--respect--thereto--in--accordance--with--the 15 procedure--prescribed-in-39-51-2403 in accordance with Title 2, chapter 4, parts 6 and 7." 16

17 Section 11. Section 39-51-1305, MCA, is amended to 18 read:

19 "39-51-1305. Priority of payment of contributions due 20 under legal dissolutions or distributions. (1) In the event 21 of any distribution of an employer's assets pursuant to an 22 order of any court under the laws of this state, including 23 any receivership, assignment for benefit of creditors, 24 adjudicated insolvency, composition, or similar proceeding, 25 contributions then or thereafter due shall be paid in full

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prior to all other claims, except taxes and claims for wages
 of not more than \$250 to each claimant earned within 6
 months of the commencement of the proceeding.

(2)--In--the--event--of--an--employer-s-adjudication-in 4 5 bankruptcy7--judicially--confirmed--extension--proposal7--or 6 composition--under-the-Federal-Bankruptcy-Act7-contributions 7 then-or-thereafter-due-shall--be--entitled--to--priority--of payment-as-a-debt-due-the-sovereign-power-as-provided-by-the 8 Bankruptcy--Act--of-June-227-1938-(Chapt-575-52-Statt-840);" 9 10 Section 12. Section 39-51-2104, MCA, is amended to 11 read:

12 "39-51-2104. General benefit eligibility conditions.
13 An unemployed individual is eligible to receive benefits for
14 any week of total unemployment within his benefit year only
15 if the department finds that:

16 (1) he has registered--for-work filed a claim at and 17 thereafter has continued to report at an employment office 18 in accordance with such regulation as the department may prescribe, except that the department may, by regulation, 19 20 prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this 21 22 chapter, an unemployed individual may register file a claim and report for work by mail or through other governmental 23 24 agencies;

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+2)--he--has--made--a--elaim-for-benefits-in-accordance

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1 with-the-provisions-of-39-51-2401;

(3)(2) he is able to work and is available for work 2 3 and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for 4 failure to comply with the provisions of this subsection if 5 such failure is due to an illness or disability which occurs 6 after he has registered for work and no suitable work has 7 been offered to such claimant after the beginning of such 8 illness or disability; 9

(4)(3) prior to any week for which he claims benefits 10 he has been totally unemployed for a waiting period of 1 11 week. However, if claimant's benefit year expires during a 12 period of compensable unemployment, claimant will continue 13 to receive weekly benefits in a new benefit year, if 14 otherwise eligible, without interruption to serve the 15 waiting week for the new benefit year but will thereafter be 16 required to serve the waiting week before receiving benefits 17 during subsequent unemployment in the new benefit year. No 18 week is counted as a week of total unemployment for the 19 purposes of this subsection: 20

(a) if benefits have been paid with respect thereto;
(b) unless the individual was eligible for benefits
with respect thereto;

24 (c) unless it occurs within the benefit year of the 25 claimant;

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(d) unless it occurs after benefits first could become
 payable to any individual under this chapter."

3 Section 13. Section 39-51-2307, MCA, is amended to 4 read:

5 "39-51-2307. Disgualification because of student 6 status. (1) Effective April 1, 1977, an individual shall be 7 disgualified for benefits during the school year (within the 8 autumn, winter, and spring seasons of the year) or the 9 vacation periods within such school year or during any 10 prescribed school term if claimant is a student regularly 11 attending an established educational institution.

12 (2) Notwithstanding any other provisions in this 13 section, no otherwise eligible individual shall be denied 14 benefits for any week because he is in training approved by 15 the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved 16 17 by the department by reason of the application of provisions 18 in 39-51-2304 or the application of provisions in 19 39-51-2104+3+(2)."

20 Section 14. Section 39-51-2410, MCA, is amended to 21 read:

"39-51-2410. Finality of board's decision -- judicial
review. (1) Any decision of the board in the absence of an
appeal therefrom as herein provided shall become final 30
days after the date of notification or mailing thereof,

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except in the case of the department when such decision 1 2 becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any З party claiming to be aggrieved thereby has exhausted his 4 remedies before the board. The department shall be deemed to 5 be a party to any judicial action involving any such 6 7 decision and may be represented in any such action by an 8 attorney employed by the department or at the department's 9 request, by the attorney general.

10 (2) Within 30 days after the date of notification or 11 mailing of the decision of the board, any party aggrieved 12 thereby may secure judicial review thereof by commencing an 13 action in the district court of the county in which said 14 party resides and in which action any other party to the proceeding before the board shall be made a defendant. In 15 such action a petition, which need not be verified but which 16 17 shall state the grounds upon which a review is sought, shall 18 be served upon the commissioner of labor and industry or-his 19 designee--and-such-service-shall-be-deemed-completed-service 20 on-all-parties7-but-there-shall-be-left-with--the--party--se 21 served---as--many--copies--of--the--petition--as--there--are 22 defendants-and-the-department-shall-forthwith-mail-one--such 23 copy-to-each-such-defendant and all other interested parties 24 in the manner provided in the Montana Rules of Civil 25 Procedure.

1 (3) With its answer, the department shall certify and 2 file with said court all documents and papers and a 3 transcript of all testimony taken in the matter, together 4 with the board's findings of fact and decision. The board 5 may also in its discretion certify to such court questions 6 of law involved in any decision by it.

7 (4) Whenever the department seeks review of a decision
8 of the board, all interested parties shall be served with a
9 copy of its petition together with all documents filed with
10 the court.

(5) In any judicial proceeding under 39-51-2406 11 through 39-51-2410, the findings of the board as to the 12 13 facts, if supported by evidence and in the absence of fraud, 14 shall be conclusive and the jurisdiction of said court shall be confined to guestions of law. Such action and the 15 questions so certified shall be heard in a summary manner 16 17 and shall be given precedence over all other civil cases 18 except cases arising under the workers' compensation law of 19 this state.

20 (6) An appeal may be taken from the decision of the 21 district court to the supreme court of Montana in the same 22 manner, but not inconsistent with the provisions of this 23 chapter, as is provided in civil cases. It shall not be 24 necessary in any judicial proceeding under this section to 25 enter exceptions to the rulings of the board and no bond

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1	shall be required for entering such appeal. Upon the final
2	determination of such judicial proceeding, the department
3	shall enter an order in accordance with such determination."
4	NEW SECTION. SECTION 15. COLLECTION OF BENEFIT
5	OVERPAYMENTS. A PERSON WHO RECEIVES BENEFITS NOT AUTHORIZED
6	BY THIS CHAPTER SHALL REPAY TO THE DEPARTMENT, EITHER
7	DIRECTLY OR AS AUTHORIZED BY THE DEPARTMENT, BY OFFSET OF
8	FUTURE BENEFITS TO WHICH HE MAY BE ENTITLED, OR BY A
9	COMBINATION OF BOTH SUCH METHODS, A SUM EQUAL TO THE AMOUNT
10	RECEIVED BY HIM UNLESS THE DEPARTMENT FINDS THAT THE
11	BENEFITS WERE RECEIVED THROUGH NO FAULT OF THE PERSON AND
1 2	THE RECOVERY OF SUCH BENEFITS WOULD BE AGAINST EQUITY AND
13	GOOD CONSCIENCE.
14	NEW SECTION. Section 16. Extension of authority. Any
16	aviating sutherity of the deportment of labor and inductor

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existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

18 <u>NEW SECTION.</u> Section 17. Effective date. This act is
 19 effective on passage and approval.

-End-

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