

HOUSE BILL NO. 428

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 SENATE

February 12, 1985	Introduced and referred to Committee on Labor and Employment Relations.
March 7, 1985	Committee recommend bill be concurrent in. Report adopted.

March 8, 1985

Second reading, concurred in.

March 11, 1985

Third reading, concurred in.  
Ayes, 50; Noes, 0.

Returned to House.

IN THE HOUSE

March 12, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1                    HOUSE BILL NO. 428  
 2 INTRODUCTION 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  
 11 AN IMMEDIATE EFFECTIVE DATE."

12  
 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~~  
 19 ~~appointed--by--the--commissioner--of--labor--and--industry--to~~  
 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.

1 ~~{3}--"Annual-total-payroll"--means--the--total--of--the--four~~  
 2 ~~quarters--of--total--payrolls--of--an--employer--preceding--the~~  
 3 ~~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

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  
 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.

17 ~~{11}~~{9} "Employing unit" means any individual or  
 18 organization, including the state government, any of its  
 19 political subdivisions or instrumentalities, any  
 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  
 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.

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:

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 a  
 16 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

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

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

1 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        ~~{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  
 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  
 24 with sickness or accident disability; or

25        (D) death;

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 ~~(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 \$1,500;

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

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  
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);

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

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

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

7 (e) service performed in the employ of any other state  
8 or its political subdivisions or of the United States  
9 government or of an instrumentality of any other state or  
10 states or their political subdivisions or of the United  
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  
14 the same as state banks, provided that such service is  
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  
22 become effective in the manner prescribed in the Montana  
23 Administrative Procedure Act for the adoption of rules, to  
24 provide reciprocal treatment to individuals who have, after  
25 acquiring potential rights to benefits under this chapter,

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

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

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

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 if  
 13 such service is performed by a patient of the hospital;

14 (l) 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 "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

1 association of churches or an organization which is operated  
 2 primarily for religious purposes and which is operated,  
 3 supervised, controlled, or principally supported by a church  
 4 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;

19 (e) as part of an unemployment work-relief or  
 20 work-training program assisted or financed in whole or in  
 21 part by a federal agency or any agency of a state or  
 22 political subdivision thereof by an individual receiving  
 23 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  
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  
11 shall prescribe.~~

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:

1 "39-51-302. ~~Regulations---and---general---and---special~~  
2 Administrative rules. ~~General---and---special---rules---may---be~~  
3 ~~adopted, amended, or rescinded by the department only after~~  
4 ~~public hearing or opportunity to be heard thereon, 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:

17 "39-51-304. Personnel. ~~{1}---Except---as---otherwise~~  
18 ~~provided, the department is authorized to appoint, fix the~~  
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~~

1 ~~signing checks hereunder.~~

2 ~~{2}--No person who is an officer or committee member of~~  
 3 ~~any political party organization or who holds or is a~~  
 4 ~~candidate for any public office may be appointed or employed~~  
 5 ~~under this chapter.~~

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:

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,  
 15 ~~consisting of salaried examiners selected~~ in accordance with  
 16 39-51-304. No person shall participate on behalf of the  
 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 disqualification of an appeals referee."

20 Section 8. Section 39-51-402, MCA, is amended to read:

21 "39-51-402. Unemployment insurance fund -- state  
 22 ~~treasurer ex officio~~ custodian -- accounts and deposits. (1)  
 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

1 with the directions of the department and shall issue his  
 2 warrants upon 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 ~~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,  
 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 the possession or custody of~~  
 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.

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 by  
25 each employer to the department for the fund in accordance

1 with such regulations as the department may prescribe and  
2 shall not be deducted in whole or in part from the wages of  
3 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  
19 aggrieved by any decision, determination, or redetermination  
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  
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~~

1 ~~decision of the department. The department or the deputy~~  
 2 ~~conducting the review may refer the matter to an appeals~~  
 3 ~~referee, may decide the application for review on the basis~~  
 4 ~~of such facts and information as may be obtained, or may~~  
 5 ~~hear argument to secure further facts. After such review,~~  
 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~~  
 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~~  
 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

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

4 (2) ~~In the event of an employer's adjudication in~~  
 5 ~~bankruptcy, judicially confirmed extension proposal or~~  
 6 ~~composition under the Federal Bankruptcy Act, 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 ~~Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 848):"~~

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~~

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

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

~~{4}{3}~~ prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

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

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

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

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

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

Section 14. Section 39-51-2410, MCA, is amended to 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,

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  
 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  
 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 or his  
 19 ~~designee--and-such-service-shall-be-deemed-completed-service~~  
 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~~  
 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.

11 (5) In any judicial proceeding under 39-51-2406  
 12 through 39-51-2410, the findings of the board as to the  
 13 facts, if supported by evidence and in the absence of fraud,  
 14 shall be conclusive and the jurisdiction of said court shall  
 15 be confined to questions of law. Such action and the  
 16 questions so certified shall be heard in a summary manner  
 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

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  
5 existing authority of the department of labor and industry  
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 January 24, 19 85, there is hereby submitted a Fiscal Note for H.B. 428 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:

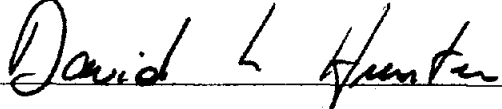
Section 39-51-202 "Employer Defined" is the only section in the proposed bill which creates a fiscal impact. Therefore, all assumption will pertain to that section only.

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	\$ 67,000,000	\$ 73,000,000
Proposed Law	<u>66,995,800</u>	<u>72,995,800</u>
Net Decrease	(\$ 4,200)	(\$ 4,200)

No Impact on State General Fund.

  
\_\_\_\_\_

BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Jan 29, 1985



APPROVED BY COMM. ON  
BUSINESS AND LABOR

1 STATEMENT OF INTENT

2 HOUSE BILL 428

3 House Business and Labor Committee

4

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  
9 compensation rules, and section 6 amends 39-51-304 to  
10 substitute the department of administration for the merit  
11 system council as the agency adopting merit system  
12 principles to be followed by the department of labor and  
13 industry in hiring personnel to administer the unemployment  
14 compensation law.

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

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  
 11 AN IMMEDIATE EFFECTIVE DATE."  
 12

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~~  
 19 ~~appointed--by--the--commissioner--of--labor--and--industry--to~~  
 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.

1 ~~{3}--"Annual-total-payroll"--means--the--total--of--the--four~~  
 2 ~~quarters--of--total--payrolls--of--an--employer--preceding--the~~  
 3 ~~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

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  
 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.

17 ~~(11)~~(9) "Employing unit" means any individual or  
 18 organization, including the state government, any of its  
 19 political subdivisions or instrumentalities, any  
 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  
 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.

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:

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 a  
16 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

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

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

1 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       ~~†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  
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  
24 with sickness or accident disability; or

25       (D) death;

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 ~~(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~~ \$1,500 ~~\$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  
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

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  
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);

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

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

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

7 (e) service performed in the employ of any other state  
8 or its political subdivisions or of the United States  
9 government or of an instrumentality of any other state or  
10 states or their political subdivisions or of the United  
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  
14 the same as state banks, provided that such service is  
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  
22 become effective in the manner prescribed in the Montana  
23 Administrative Procedure Act for the adoption of rules, to  
24 provide reciprocal treatment to individuals who have, after  
25 acquiring potential rights to benefits under this chapter,

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

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

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

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 if  
 13 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 "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

1 association of churches or an organization which is operated  
 2 primarily for religious purposes and which is operated,  
 3 supervised, controlled, or principally supported by a church  
 4 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;

19 (e) as part of an unemployment work-relief or  
 20 work-training program assisted or financed in whole or in  
 21 part by a federal agency or any agency of a state or  
 22 political subdivision thereof by an individual receiving  
 23 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  
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  
11 shall prescribe.~~

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:

1 "39-51-302. ~~Regulations and general and special~~  
2 Administrative rules. General and special rules may be  
3 adopted, amended, or rescinded by the department only after  
4 public hearing or opportunity to be heard thereon, 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:

17 "39-51-304. Personnel. ~~(1) Except as otherwise~~  
18 provided, the department is authorized to appoint, fix the  
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



1 ~~signing checks hereunder.~~

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

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:

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,  
 15 ~~consisting of salaried examiners selected~~ in accordance with  
 16 39-51-304. No person shall participate on behalf of the  
 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 disqualification of an appeals referee."

20 Section 8. Section 39-51-402, MCA, is amended to read:

21 "39-51-402. Unemployment insurance fund -- state  
 22 ~~treasurer ex officio~~ custodian -- accounts and deposits. (1)  
 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

1 with the directions of the department and shall issue his  
 2 warrants upon 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 ~~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,  
 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 the possession or custody of~~  
 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.

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 by  
 25 each employer to the department for the fund in accordance

1 with such regulations as the department may prescribe and  
 2 shall not be deducted in whole or in part from the wages of  
 3 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  
 19 aggrieved by any decision, determination, or redetermination  
 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  
 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~~

1 decision of the department. The department or the deputy  
 2 conducting the review may refer the matter to an appeals  
 3 referee, may decide the application for review on the basis  
 4 of such facts and information as may be obtained, or may  
 5 hear argument to secure further facts. After such review,  
 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  
 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  
 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

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

4 (2) In the event of an employer's adjudication in  
 5 bankruptcy, judicially confirmed extension proposal, or  
 6 composition under the Federal Bankruptcy Act, 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 Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 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

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

2       ~~{3}~~(2) he is able to work and is available for work  
3 and is seeking work; provided, however, that no claimant is  
4 considered ineligible in any week of unemployment for  
5 failure to comply with the provisions of this subsection if  
6 such failure is due to an illness or disability which occurs  
7 after he has registered for work and no suitable work has  
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  
11 he has been totally unemployed for a waiting period of 1  
12 week. However, if claimant's benefit year expires during a  
13 period of compensable unemployment, claimant will continue  
14 to receive weekly benefits in a new benefit year, if  
15 otherwise eligible, without interruption to serve the  
16 waiting week for the new benefit year but will thereafter be  
17 required to serve the waiting week before receiving benefits  
18 during subsequent unemployment in the new benefit year. No  
19 week is counted as a week of total unemployment for the  
20 purposes of this subsection:

- 21       (a) if benefits have been paid with respect thereto;
- 22       (b) unless the individual was eligible for benefits
- 23 with respect thereto;
- 24       (c) unless it occurs within the benefit year of the
- 25 claimant;

1       (d) unless it occurs after benefits first could become  
2 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.

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:

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,

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  
 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  
 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 or his  
 19 designee--and-such-service-shall-be-deemed-completed-service  
 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  
 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.

11 (5) In any judicial proceeding under 39-51-2406  
 12 through 39-51-2410, the findings of the board as to the  
 13 facts, if supported by evidence and in the absence of fraud,  
 14 shall be conclusive and the jurisdiction of said court shall  
 15 be confined to questions of law. Such action and the  
 16 questions so certified shall be heard in a summary manner  
 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

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  
19 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 428

3 House Business and Labor Committee

4

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  
9 compensation rules, and section 6 amends 39-51-304 to  
10 substitute the department of administration for the merit  
11 system council as the agency adopting merit system  
12 principles to be followed by the department of labor and  
13 industry in hiring personnel to administer the unemployment  
14 compensation law.

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



THIRD READING

HB 428

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  
 11 AN IMMEDIATE EFFECTIVE DATE."  
 12

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~~  
 19 ~~appointed--by--the--commissioner--of--labor--and--industry--to~~  
 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.

1 ~~{3}--"Annual-total-payroll"--means--the--total--of--the--four~~  
 2 ~~quarters--of--total--payrolls--of--an--employer--preceding--the~~  
 3 ~~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





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  
 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.

17 ~~(11)~~(9) "Employing unit" means any individual or  
 18 organization, including the state government, any of its  
 19 political subdivisions or instrumentalities, any  
 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  
 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.

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:

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 a  
 16 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

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

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

1 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       ~~(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  
 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  
 24 with sickness or accident disability; or

25       (D) death;

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

6 ~~(19)~~(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~~ \$1,500 ~~\$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  
 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

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  
 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);

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

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

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

7 (e) service performed in the employ of any other state  
8 or its political subdivisions or of the United States  
9 government or of an instrumentality of any other state or  
10 states or their political subdivisions or of the United  
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  
14 the same as state banks, provided that such service is  
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  
22 become effective in the manner prescribed in the Montana  
23 Administrative Procedure Act for the adoption of rules, to  
24 provide reciprocal treatment to individuals who have, after  
25 acquiring potential rights to benefits under this chapter,

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

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

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

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 if  
 13 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 "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

1 association of churches or an organization which is operated  
 2 primarily for religious purposes and which is operated,  
 3 supervised, controlled, or principally supported by a church  
 4 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;

19 (e) as part of an unemployment work-relief or  
 20 work-training program assisted or financed in whole or in  
 21 part by a federal agency or any agency of a state or  
 22 political subdivision thereof by an individual receiving  
 23 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  
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  
11 shall prescribe.~~

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:

1 "39-51-302. ~~Regulations---and---general---and---special~~  
2 Administrative rules. ~~General---and---special---rules---may---be~~  
3 ~~adopted,---amended,---or---rescinded---by---the---department---only---after~~  
4 ~~public---hearing---or---opportunity---to---be---heard---thereon,---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:

17 "39-51-304. Personnel. ~~(i)---Except---as---otherwise~~  
18 ~~provided,---the---department---is---authorized---to---appoint,---fix---the~~  
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~~

1 ~~signing checks hereunder.~~

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

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:

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  
 15 ~~consisting of salaried examiners selected~~ in accordance with  
 16 39-51-304. No person shall participate on behalf of the  
 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 disqualification of an appeals referee."

20 Section 8. Section 39-51-402, MCA, is amended to read:

21 "39-51-402. Unemployment insurance fund -- state  
 22 ~~treasurer ex officio~~ custodian -- accounts and deposits. (1)  
 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

1 ~~with the directions of the department and shall issue his~~  
 2 ~~warrants upon 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 ~~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,  
 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 the possession or custody of~~  
 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.

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 by  
25 each employer to the department for the fund in accordance

1 with such regulations as the department may prescribe and  
2 shall not be deducted in whole or in part from the wages of  
3 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  
19 aggrieved by any decision, determination, or redetermination  
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  
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



1 decision-of-the-department. The department or the deputy  
 2 conducting the review may refer the matter to an appeals  
 3 referee, may decide the application for review on the basis  
 4 of such facts and information as may be obtained, or may  
 5 hear argument to secure further facts. After such review,  
 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  
 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  
 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

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

4 (2) In the event of an employer's adjudication in  
 5 bankruptcy, judicially confirmed extension proposal, or  
 6 composition under the Federal Bankruptcy Act, 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 Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 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

1 ~~with the provisions of 39-51-240;~~

2       ~~(3)(2)~~ he is able to work and is available for work  
3 and is seeking work; provided, however, that no claimant is  
4 considered ineligible in any week of unemployment for  
5 failure to comply with the provisions of this subsection if  
6 such failure is due to an illness or disability which occurs  
7 after he has registered for work and no suitable work has  
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  
11 he has been totally unemployed for a waiting period of 1  
12 week. However, if claimant's benefit year expires during a  
13 period of compensable unemployment, claimant will continue  
14 to receive weekly benefits in a new benefit year, if  
15 otherwise eligible, without interruption to serve the  
16 waiting week for the new benefit year but will thereafter be  
17 required to serve the waiting week before receiving benefits  
18 during subsequent unemployment in the new benefit year. No  
19 week is counted as a week of total unemployment for the  
20 purposes of this subsection:

21       (a) if benefits have been paid with respect thereto;

22       (b) unless the individual was eligible for benefits  
23 with respect thereto;

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

1       (d) unless it occurs after benefits first could become  
2 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.

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:

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,

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  
 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  
 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 or his  
 19 designee--and such service shall be deemed completed service  
 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  
 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.

11 (5) In any judicial proceeding under 39-51-2406  
 12 through 39-51-2410, the findings of the board as to the  
 13 facts, if supported by evidence and in the absence of fraud,  
 14 shall be conclusive and the jurisdiction of said court shall  
 15 be confined to questions of law. Such action and the  
 16 questions so certified shall be heard in a summary manner  
 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

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  
19 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 428

3 House Business and Labor Committee

4

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  
9 compensation rules, and section 6 amends 39-51-304 to  
10 substitute the department of administration for the merit  
11 system council as the agency adopting merit system  
12 principles to be followed by the department of labor and  
13 industry in hiring personnel to administer the unemployment  
14 compensation law.

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

HOUSE BILL NO. 428  
 INTRODUCED BY MILES  
 BY REQUEST OF THE DEPARTMENT  
 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."

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

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~{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 five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.

{5}{3} "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

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

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  
 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.

17 ~~{11}~~(9) "Employing unit" means any individual or  
 18 organization, including the state government, any of its  
 19 political subdivisions or instrumentalities, any  
 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  
 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.

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:

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 a  
 16 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

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

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

1 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        ~~{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  
 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
- 24 with sickness or accident disability; or
- 25        (D) death;



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 ~~(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 ~~\$1,500~~ \$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  
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

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  
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);

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

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

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

7 (e) service performed in the employ of any other state  
8 or its political subdivisions or of the United States  
9 government or of an instrumentality of any other state or  
10 states or their political subdivisions or of the United  
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  
14 the same as state banks, provided that such service is  
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  
22 become effective in the manner prescribed in the Montana  
23 Administrative Procedure Act for the adoption of rules, to  
24 provide reciprocal treatment to individuals who have, after  
25 acquiring potential rights to benefits under this chapter,

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

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

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

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 if  
 13 such service is performed by a patient of the hospital;

14 (l) 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 "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

1 association of churches or an organization which is operated  
 2 primarily for religious purposes and which is operated,  
 3 supervised, controlled, or principally supported by a church  
 4 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;

19 (e) as part of an unemployment work-relief or  
 20 work-training program assisted or financed in whole or in  
 21 part by a federal agency or any agency of a state or  
 22 political subdivision thereof by an individual receiving  
 23 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  
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  
11 shall prescribe.~~

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:

1 "39-51-302. ~~Regulations---and---general---and---special~~  
2 Administrative rules. General---and---special---rules---may---be  
3 adopted,---amended,---or---rescinded---by---the---department---only---after  
4 public-hearing-or-opportunity-to-be-heard-thereon,---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:

17 "39-51-304. Personnel. ~~{1}~~---Except---as---otherwise  
18 provided,---the---department---is---authorized---to---appoint,---fix---the  
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

1 ~~signing checks hereunder.~~

2 ~~{2}--No person who is an officer or committee member of~~  
 3 ~~any political party organization or who holds or is a~~  
 4 ~~candidate for any public office may be appointed or employed~~  
 5 ~~under this chapter.~~

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:

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,  
 15 ~~consisting of salaried examiners selected~~ in accordance with  
 16 39-51-304. No person shall participate on behalf of the  
 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 disqualification of an appeals referee."

20 Section 8. Section 39-51-402, MCA, is amended to read:

21 "39-51-402. Unemployment insurance fund -- state  
 22 ~~treasurer-ex-officio~~ custodian -- accounts and deposits. (1)  
 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

1 with the directions of the department and shall issue his  
 2 warrants upon 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 ~~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,  
 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 the possession or custody of~~  
 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.

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 by  
25 each employer to the department for the fund in accordance

1 with such regulations as the department may prescribe and  
2 shall not be deducted in whole or in part from the wages of  
3 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  
19 aggrieved by any decision, determination, or redetermination  
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  
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

1 ~~decision of the department. The department or the deputy~~  
 2 ~~conducting the review may refer the matter to an appeals~~  
 3 ~~referee, may decide the application for review on the basis~~  
 4 ~~of such facts and information as may be obtained, or may~~  
 5 ~~hear argument to secure further facts. After such review,~~  
 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~~  
 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~~  
 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. {†} 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

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

4 {2} In the event of an employer's adjudication in  
 5 bankruptcy, judicially confirmed extension proposal, or  
 6 composition under the Federal Bankruptcy Act, 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 Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 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

1 ~~with the provisions of 39-51-2401;~~  
 2 ~~(3)(2)~~ he is able to work and is available for work  
 3 and is seeking work; provided, however, that no claimant is  
 4 considered ineligible in any week of unemployment for  
 5 failure to comply with the provisions of this subsection if  
 6 such failure is due to an illness or disability which occurs  
 7 after he has registered for work and no suitable work has  
 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  
 11 he has been totally unemployed for a waiting period of 1  
 12 week. However, if claimant's benefit year expires during a  
 13 period of compensable unemployment, claimant will continue  
 14 to receive weekly benefits in a new benefit year, if  
 15 otherwise eligible, without interruption to serve the  
 16 waiting week for the new benefit year but will thereafter be  
 17 required to serve the waiting week before receiving benefits  
 18 during subsequent unemployment in the new benefit year. No  
 19 week is counted as a week of total unemployment for the  
 20 purposes of this subsection:  
 21 (a) if benefits have been paid with respect thereto;  
 22 (b) unless the individual was eligible for benefits  
 23 with respect thereto;  
 24 (c) unless it occurs within the benefit year of the  
 25 claimant;

1 (d) unless it occurs after benefits first could become  
 2 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.  
 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:  
 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,



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  
 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  
 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 or his  
 19 ~~designee--and-such-service-shall-be-deemed-completed-service~~  
 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  
 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.

11 (5) In any judicial proceeding under 39-51-2406  
 12 through 39-51-2410, the findings of the board as to the  
 13 facts, if supported by evidence and in the absence of fraud,  
 14 shall be conclusive and the jurisdiction of said court shall  
 15 be confined to questions of law. Such action and the  
 16 questions so certified shall be heard in a summary manner  
 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

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  
19 effective on passage and approval.

-End-