

SENATE BILL NO. 393

2/11 Introduced
2/12 Referred to Labor & Employment Relations
2/19 Hearing
2/21 Fiscal Note Requested
2/23 Minor Committee Report Not Adopted
2/23 Major Committee Report Adopted
2/23 Adverse Committee Report
2/23 Bill Killed
2/29 Fiscal Note Received

1 *Senate* BILL NO. *393*
 2 INTRODUCED BY *Deputy William Moore*
 3 *Robert Steyer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE BOARD OF
 5 LABOR APPEALS AND TRANSFERRING THE BOARD'S FUNCTIONS TO THE
 6 COMMISSIONER OF LABOR AND INDUSTRY; INCREASING QUALIFYING
 7 WAGE REQUIREMENTS FOR UNEMPLOYMENT COMPENSATION BENEFITS;
 8 ESTABLISHING THE MAXIMUM WEEKLY BENEFIT AMOUNT FOR
 9 UNEMPLOYMENT COMPENSATION AT 50 PERCENT OF THE AVERAGE
 10 WEEKLY WAGE IN COVERED EMPLOYMENT; PROVIDING THAT A PERSON
 11 WHO LEAVES WORK IS DISQUALIFIED FROM RECEIVING UNEMPLOYMENT
 12 COMPENSATION BENEFITS UNLESS HE LEAVES FOR GOOD CAUSE
 13 ATTRIBUTABLE TO HIS EMPLOYMENT; REQUIRING THAT SUCH PERSON
 14 MUST RECEIVE REMUNERATION AT LEAST EQUAL TO EIGHT TIMES HIS
 15 WEEKLY BENEFIT AMOUNT TO REQUALIFY FOR BENEFITS; AMENDING
 16 SECTIONS 39-51-201, 39-51-310, 39-51-603, 39-51-2105,
 17 39-51-2201, 39-51-2302, 39-51-2404, 39-51-2405, 39-51-2407,
 18 39-51-2410, 39-51-3101, AND 39-51-3104, MCA; REPEALING
 19 SECTION 2-15-1704, MCA; AND PROVIDING EFFECTIVE DATES AND AN
 20 APPLICABILITY DATE."

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 23 Section 1. Section 39-51-201, MCA, is amended to read:
 24 "39-51-201. General definitions. As used in this
 25 chapter, unless the context clearly requires otherwise, the

1 following definitions apply:
 2 (1) The word "administrator" refers to a person
 3 appointed by the commissioner of labor and industry to
 4 direct and administer the unemployment insurance laws and
 5 federal laws falling within the administrator's
 6 jurisdiction.
 7 (2) "Annual payroll" means the total amount of wages
 8 paid by an employer, regardless of the time of payment, for
 9 employment during a calendar year.
 10 (3) "Annual total payroll" means the total of the four
 11 quarters of total payrolls of an employer preceding the
 12 computation date as fixed herein.
 13 (4) "Base period" means the first four of the last
 14 five completed calendar quarters immediately preceding the
 15 first day of an individual's benefit year. However, in the
 16 case of a combined-wage claim pursuant to the arrangement
 17 approved by the secretary of labor of the United States, the
 18 base period shall be that applicable under the unemployment
 19 law of the paying state. For an individual who fails to
 20 meet the qualifications of 39-51-2105 due to a temporary
 21 total disability as defined in 39-71-116 or a similar
 22 statute of another state or the United States, the base
 23 period means the first four quarters of the last five
 24 quarters preceding the disability if a claim for
 25 unemployment benefits is filed within 18 months of the



1 individual's last employment.

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

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

17 ~~{7}--"Board"--means-the-board-of-labor-appeals--provided~~
18 ~~for-in Title-2,-chapter-15,-part-17.~~

19 {8}{7} "Calendar quarter" means the period of 3
20 consecutive calendar months ending on March 31, June 30,
21 September 30, or December 31.

22 {9}{8} "Contributions" means the money payments to the
23 state unemployment insurance fund required by this chapter.

24 (9) "Commissioner" means the commissioner of the
25 department of labor and industry provided for in 2-15-1701.

1 (10) "Department" means the department of labor and
2 industry provided for in Title 2, chapter 15, part 17.

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

25 (12) "Employment office" means a free public employment

1 office or branch thereof operated by this state or
 2 maintained as a part of a state-controlled system of public
 3 employment offices or such other free public employment
 4 offices operated and maintained by the United States
 5 government or its instrumentalities as the department may
 6 approve.

7 (13) "Fund" means the unemployment insurance fund
 8 established by this chapter to which all contributions and
 9 payments in lieu of contributions are required and from
 10 which all benefits provided under this chapter shall be
 11 paid.

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

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

20 (16) (a) "Institution of higher education", for the
 21 purposes of this part, means an educational institution
 22 which:

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

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

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

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

10 (b) Notwithstanding any of the foregoing provisions of
 11 this subsection, all colleges and universities in this state
 12 are institutions of higher education for purposes of this
 13 part.

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

17 (18) "Unemployment insurance administration fund" means
 18 the unemployment insurance administration fund established
 19 by this chapter from which administrative expenses under
 20 this chapter shall be paid.

21 (19) (a) "Wages" means all remuneration payable for
 22 personal services, including commissions and bonuses and the
 23 cash value of all remuneration payable in any medium other
 24 than cash. The reasonable cash value of remuneration
 25 payable in any medium other than cash shall be estimated and

1 determined in accordance with rules prescribed by the
2 department.

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

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

6 (A) retirement;

7 (B) sickness or accident disability;

8 (C) medical and hospitalization expenses in connection
9 with sickness or accident disability; or

10 (D) death;

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

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

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

19 Section 2. Section 39-51-310, MCA, is amended to read:

20 "39-51-310. Function of board. The board commissioner
21 shall act in a quasi-judicial capacity for the hearing of
22 disputes concerning the administration of Montana's
23 unemployment insurance laws."

24 Section 3. Section 39-51-603, MCA, is amended to read:

25 "39-51-603. Employing unit to keep records and make

1 reports. (1) Each employing unit shall keep true and
2 accurate work records containing such information as the
3 department may prescribe. Those records shall be open to
4 inspection and shall be subject to being copied by the
5 department or its authorized representative at any
6 reasonable time and as often as may be necessary.

7 (2) The department and the ~~chairman--of-any-appeal~~
8 ~~tribunal~~ commissioner may require from any employing unit
9 any sworn or unsworn reports with respect to persons
10 employed by it which the department considers necessary to
11 the effective administration of this chapter.

12 (3) Information thus obtained or obtained from any
13 individual under this chapter shall, except to the
14 individual claimant to the extent necessary for the proper
15 presentation of a claim, be held confidential and shall not
16 be published or be open to public inspection, except to
17 public employees in the performance of their public duties,
18 in any manner revealing the individual's or employing unit's
19 identity, but any claimant or his legal representative at a
20 hearing before the ~~board--or--appeal--tribunal~~ commissioner
21 shall be supplied with information from the records to the
22 extent necessary for the proper presentation of his claim.

23 (4) Any employee or member of the department who
24 violates any provision of this section shall be fined not
25 less than \$20 or more than \$200 or imprisoned for not longer

1 than 90 days or both."

2 Section 4. Section 39-51-2105, MCA, is amended to
3 read:

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

9 (2) On and after July 1, ~~1980~~ 1985, to qualify for
10 benefits, an individual must have had at least 20 weeks of
11 work with an average of ~~\$50~~ \$100 per week in subject
12 employment in the base period. To qualify for benefits, the
13 total base period wages must be ~~\$17,000~~ \$2,000 or more.

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

19 (a) which were not employment as defined in
20 39-51-204(1)(a) and (1)(b) at any time during the 1-year
21 period ending December 31, 1975; and

22 (b) which:

23 (i) are agricultural labor, as defined in
24 39-51-203(8), or domestic service, as defined in
25 39-51-203(9); or

1 (ii) are services performed by an employee of this
2 state or a political subdivision thereof, as provided in
3 39-51-203(5), or by an employee of a nonprofit educational
4 institution which is not an institution of higher education,
5 as provided in 39-51-203(6), except to the extent that
6 assistance under Title II of the Emergency Jobs and
7 Unemployment Assistance Act of 1974 was paid on the basis of
8 such services."

9 Section 5. Section 39-51-2201, MCA, is amended to
10 read:

11 "39-51-2201. Weekly benefit amount -- determination of
12 average weekly wage. (1) An eligible individual's weekly
13 benefit amount shall be the total base period wages divided
14 by the number of weeks of covered employment times 50%. The
15 weekly benefit amount, if not a multiple of \$1, must be
16 rounded to the nearest lower full dollar amount. However,
17 such amount shall not be less than the minimum or more than
18 the maximum weekly benefit amount.

19 (2) On or before May 31 of each year, the total wages
20 paid by all employers as reported on contribution reports
21 submitted on or before such date for the preceding calendar
22 year shall be divided by the average monthly number of
23 individuals employed during the same preceding calendar year
24 as reported on such contribution reports. The amount thus
25 obtained shall be divided by 52 and the average weekly wage,

1 rounded to the nearest cent, thus determined. ~~Sixty~~ Fifty
 2 percent of the average weekly wage shall constitute the
 3 maximum weekly benefit amount and shall apply to all maximum
 4 weekly benefit amount claims for benefits filed to establish
 5 a benefit year commencing on or after July 1 of the same
 6 year. Such maximum weekly benefit amount, if not a multiple
 7 of \$1, shall be computed to the nearest lower full dollar
 8 amount.

9 (3) The minimum weekly benefit amount shall be 15% of
 10 the average weekly wage. The minimum weekly benefit amount,
 11 if not a multiple of \$1, shall be computed to the nearest
 12 lower full dollar amount."

13 Section 6. Section 39-51-2302, MCA, is amended to
 14 read:

15 "39-51-2302. Disqualification for leaving work without
 16 good cause attributable to employment. (1) An individual
 17 shall be disqualified for benefits if he has left work
 18 without good cause attributable to his employment.

19 (2) He may not be disqualified if the department finds
 20 that he left his employment because of personal illness or
 21 injury not associated with misconduct or left his employment
 22 upon the advice of a licensed and practicing physician and,
 23 after recovering from his illness or injury when recovery is
 24 certified by a licensed and practicing physician, he
 25 returned to his employer and offered his service and his

1 regular or comparable suitable work was not available, if so
 2 found by the department, provided he is otherwise eligible.

3 (3) To requalify for benefits, an individual must
 4 perform services other than self-employment for which
 5 remuneration is received equal to or in excess of ~~six~~ eight
 6 times his weekly benefit amount subsequent to the week in
 7 which the act causing the disqualification occurred unless
 8 he has been in regular attendance at an educational
 9 institution accredited by the state of Montana for at least
 10 3 consecutive months from the date of his enrollment."

11 Section 7. Section 39-51-2404, MCA, is amended to
 12 read:

13 "39-51-2404. Appeal to board commissioner. Any
 14 interested party dissatisfied with a decision of an appeals
 15 referee is entitled to appeal to the board commissioner. ~~The~~
 16 ~~department--will--promptly--transmit--all--records--pertinent--to~~
 17 ~~the--appeal--to--the--board~~. When a decision is rendered by the
 18 board commissioner with copies of such decision to all
 19 interested parties, ~~including-the-department~~, that decision
 20 shall become final unless an interested party requests a
 21 rehearing or initiates judicial review by filing a petition
 22 in district court within 30 days of the date of mailing of
 23 the ~~board's~~ commissioner's decision to his last known
 24 address."

25 Section 8. Section 39-51-2405, MCA, is amended to

1 read:

2 "39-51-2405. Prompt payment of claims. (1)
3 Notwithstanding any provision in 39-51-2402 or 39-51-2404,
4 benefits shall be paid promptly in accordance with a
5 determination or redetermination under 39-51-2402 or the
6 decision of an appeals referee, the board commissioner, or a
7 reviewing court under 39-51-2404 upon the issuance of such
8 determination, redetermination, or decision regardless of
9 the pendency of the period to apply for reconsideration,
10 file an appeal, or petition for judicial review that is
11 provided with respect thereto in 39-51-2404, as the case may
12 be, or the pendency of any such application, filing, or
13 petition, unless and until such determination,
14 redetermination, or decision has been modified or reversed
15 by a subsequent redetermination or decision, in which event
16 benefits shall be paid or denied for weeks of unemployment
17 thereafter in accordance with such modifying or reversing
18 redetermination or decision.

19 (2) If a deputy's determination or redetermination
20 allowing benefits is affirmed in any amount by an appeals
21 referee or by the board commissioner or if a decision of an
22 appeals referee allowing benefits is affirmed in any amount
23 by the board commissioner, such benefits shall be paid
24 promptly regardless of any further appeal or the disposition
25 of such appeal and no injunction, supersedeas, stay, or

1 other writ or process suspending the payment of such
2 benefits shall be issued by the board commissioner or any
3 court. Benefits shall not be paid for any weeks of
4 unemployment involved in such modification or reversal that
5 begins after such final decision."

6 Section 9. Section 39-51-2407, MCA, is amended to
7 read:

8 "39-51-2407. Procedure for disputed claims to be
9 prescribed by regulation. The manner in which disputed
10 claims shall be presented, the reports thereon required from
11 the claimant and from employers, and the conduct of hearings
12 and appeals shall be in accordance with regulations
13 prescribed by the department ~~or the~~ board for determining
14 the rights of the parties, whether or not such regulations
15 conform to common law or statutory rules of evidence and
16 other technical rules or procedure."

17 Section 10. Section 39-51-2410, MCA, is amended to
18 read:

19 "39-51-2410. Finality of board's commissioner's
20 decision -- judicial review. (1) Any decision of the board
21 commissioner in the absence of an appeal therefrom as herein
22 provided shall become final 30 days after the date of
23 notification or mailing thereof, except in the case of the
24 department when such decision becomes final 20 days
25 following the board's commissioner's decision, and judicial

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

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

22 (3) With its answer, the department shall certify and
 23 file with said court all documents and papers and a
 24 transcript of all testimony taken in the matter, together
 25 with the board's commissioner's findings of fact and

1 decision. The board commissioner may also in its his
 2 discretion certify to such court questions of law involved
 3 in any decision by ~~it~~ him.

4 ~~{4}--Whenever the department seeks review of a decision~~
 5 ~~of the board, all interested parties shall be served with a~~
 6 ~~copy of its petition together with all documents filed with~~
 7 ~~the court.~~

8 {5}(4) In any judicial proceeding under 39-51-2406
 9 through 39-51-2410, the findings of the board commissioner
 10 as to the facts, if supported by evidence and in the absence
 11 of fraud, shall be conclusive and the jurisdiction of said
 12 court shall be confined to questions of law. Such action and
 13 the questions so certified shall be heard in a summary
 14 manner and shall be given precedence over all other civil
 15 cases except cases arising under the workers' compensation
 16 law of this state.

17 {6}(5) An appeal may be taken from the decision of the
 18 district court to the supreme court of Montana in the same
 19 manner, but not inconsistent with the provisions of this
 20 chapter, as is provided in civil cases. It shall not be
 21 necessary in any judicial proceeding under this section to
 22 enter exceptions to the rulings of the board commissioner
 23 and no bond shall be required for entering such appeal. Upon
 24 the final determination of such judicial proceeding, the
 25 department shall enter an order in accordance with such

1 determination."

2 Section 11. Section 39-51-3101, MCA, is amended to
3 read:

4 "39-51-3101. Protection against self-incrimination. No
5 person shall be excused from attending and testifying or
6 from producing books, papers, correspondence, memoranda, and
7 other records before the department or ~~board;--the--chairman~~
8 ~~of--an--appeal-tribunal;~~ commissioner or any duly authorized
9 representative of either of them or in obedience to the
10 subpoena of the department or board commissioner ~~or-any~~
11 ~~member-thereof~~ or any duly authorized representative of the
12 department in any cause or proceeding before the department
13 or board commissioner on the ground that the testimony or
14 evidence, documentary or otherwise, required of him may tend
15 to incriminate him or subject him to a penalty or
16 forfeiture, but no individual shall be prosecuted or
17 subjected to any penalty or forfeiture for or on account of
18 any transaction, matter, or thing concerning which he is
19 compelled, after having claimed his privilege against
20 self-incrimination, to testify or produce evidence,
21 documentary or otherwise, except that such individual so
22 testifying shall not be exempt from prosecution and
23 punishment for perjury committed in so testifying."

24 Section 12. Section 39-51-3104, MCA, is amended to
25 read:

1 "39-51-3104. Limitation of fees in claim for benefits
2 -- penalty for violation. (1) No individual claiming
3 benefits shall be charged fees of any kind in any proceeding
4 under this chapter by the department or its representatives
5 or by any court or any officer thereof.

6 (2) Any individual claiming benefits in any proceeding
7 before the chairman of an appeal tribunal or the department
8 or its representatives, the board commissioner, or a court
9 may be represented by counsel or other duly authorized
10 agent, but no such counsel or agents shall either charge or
11 receive for such services more than an amount approved by
12 the department or board commissioner.

13 (3) Any person who violates any provision of this
14 section shall, for each such offense, be fined not more than
15 \$500 or imprisoned for not more than 6 months or both."

16 NEW SECTION. Section 13. Extension of authority. Any
17 existing authority of the department of labor and industry
18 to make rules on the subject of the provisions of this act
19 is extended to the provisions of this act.

20 NEW SECTION. Section 14. Repealer. Section 2-15-1704,
21 MCA, is repealed.

22 NEW SECTION. Section 15. Effective dates --
23 applicability. (1) Sections 1 through 3, 7 through 12, and
24 14 are effective October 1, 1985.

25 (2) Sections 4 through 6, 13, and this section are

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1 effective July 1, 1985, and apply to claims filed on or
2 after July 1, 1985.

-End-