

HOUSE BILL NO. 143

INTRODUCED BY HARPER, DONALDSON

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

JANUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 2, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 3, 1987 PRINTING REPORT.

FEBRUARY 4, 1987 SECOND READING, DO PASS.

FEBRUARY 5, 1987 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 96; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 10, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

MARCH 6, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 10, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

MARCH 12, 1987 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 14, 1987 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 17, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 18, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

H.B. BILL NO. 143
INTRODUCED BY Wayne Donaldson
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS ON UNEMPLOYMENT INSURANCE; PROHIBITING VENDORS DELINQUENT ON UNEMPLOYMENT OR WORKERS' COMPENSATION PAYMENTS FROM BEING INCLUDED ON THE STATE'S VENDOR LIST; AMENDING SECTIONS 18-4-241, 39-51-201, 39-51-203, 39-51-204, 39-51-407, 39-51-1101, 39-51-1109, 39-51-1121, 39-51-1125, 39-51-1213, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2101, 39-51-2105, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2403, 39-51-2410, 39-51-2501, 39-51-3105, 39-51-3202, AND 39-51-3206, MCA; REPEALING SECTION 39-51-2206, 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) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(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 24 months of the date on which the individual's disability was incurred.

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

(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 result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim

1 pursuant to the arrangement approved by the secretary of
2 labor of the United States, the base period is the period
3 applicable under the unemployment law of the paying state.

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

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

9 (7) "Contributions" means the money payments to the
10 state unemployment insurance fund required by this chapter
11 but does not include assessments under 39-51-404(4).

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

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

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

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

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

23 (12) "Gross misconduct" means a criminal act, other
24 than a violation of a motor vehicle traffic law, for which
25 an individual has been convicted in a criminal court or has

1 admitted or conduct which demonstrates a flagrant and wanton
2 disregard of and for the rights or title or interest of a
3 fellow employee or his the employer.

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

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

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

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

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

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

21 (b) Notwithstanding any of the foregoing provisions of
22 this subsection, all colleges and universities in this state
23 are institutions of higher education for purposes of this
24 part.

25 (15) "State" includes, in addition to the states of the

1 United States of America, the District of Columbia, Puerto
2 Rico, the Virgin Islands, and the Dominion of Canada.

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

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

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

16 (i) the amount of any payment, including the amount
17 paid by an employer for insurance or annuities or into a
18 fund to provide for such payment made after July 1, 1987, to
19 or on behalf of an employee or a dependent under a plan or
20 system established by an employer that makes provision for
21 the employee generally or for a class or classes of
22 employees or their dependents on account of:

23 (A) retirement;

24 (B) sickness or accident disability, but in the case
25 of payments made to an employee or dependent, this

1 subsection (17)(b)(i)(B) includes from the term "wages" only
 2 payments that are received under a workers' compensation
 3 law;

4 (C) medical and hospitalization expenses in connection
 5 with sickness or accident disability; or

6 (D) death;

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

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

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

15 Section 2. Section 39-51-203, MCA, is amended to read:

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

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

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

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

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

6 (B) the base of operations or place from which such
 7 service is directed or controlled is not in any state in
 8 which some part of the service is performed, but the
 9 individual's residence is in this state.

10 (b) Service is considered to be localized within a
 11 state if:

12 (i) the service is performed entirely within such
 13 state; or

14 (ii) the service is performed both within and without
 15 such state, but the service performed without such state is
 16 incidental to the individual's service within the state, for
 17 example, is temporary or transitory in nature or consists of
 18 isolated transactions.

19 (3) Service not covered under subsection (2) of this
 20 section and performed entirely without this state with
 21 respect to no part of which contributions are required and
 22 paid under an unemployment insurance law of any other state
 23 or of the federal government is considered to be employment
 24 subject to this chapter if the individual performing such
 25 services is a resident of this state and the department

1 approves the election of the employing unit for whom such
2 services are performed that the entire service of such
3 individual is considered to be employment subject to this
4 chapter.

5 (4) Service performed by an individual for wages is
6 considered to be employment subject to this chapter unless
7 and until it is shown to the satisfaction of the department
8 that:

9 (a) such individual has been and will continue to be
10 free from control or direction over the performance of such
11 services, both under his the individual's contract and in
12 fact;

13 (b) such service is either outside the usual course of
14 the business for which such service is performed or that
15 such service is performed outside of all the places of
16 business of the enterprise for which such service is
17 performed; and

18 (c) such individual is customarily engaged in an
19 independently established trade, occupation, profession, or
20 business.

21 (5) The term "employment" includes service performed
22 ~~after--December--31--1971~~ by an individual in the employ of
23 this state or any of its instrumentalities (or in the employ
24 of this state and one or more other states or their
25 instrumentalities) for a hospital or institution of higher

1 education located in this state. The term "employment"
2 includes service performed ~~after--July--1--1975~~ by all
3 individuals, including without limitations those individuals
4 who work for the state of Montana, its university, any of
5 its colleges, public schools, components or units thereof,
6 or any local government unit and one or more other states or
7 their instrumentalities or political subdivisions whose
8 services are compensated by salary or wages.

9 (6) The term "employment" includes service performed
10 ~~after--December--31--1971~~ by an individual in the employ of a
11 religious, charitable, scientific, literary, or educational
12 organization.

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

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

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

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

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

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

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

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

15 (i) an individual who is a resident of the United
16 States;

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

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

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

23 (8) Agricultural labor exempted under 39-51-204 is
24 considered employment ~~subject--to--this--chapter--effective~~
25 ~~January--17--1978~~, whenever the employing unit pays \$20,000 or

1 more in cash to workers for agricultural labor in any
2 quarter in the current or preceding calendar year or employs
3 10 or more workers in agricultural labor on 20 days in 20
4 different weeks during the current or preceding calendar
5 year. If an employer is otherwise subject to the chapter
6 and has agricultural employment, all employees are covered
7 under the chapter regardless of the amount of money
8 expended for agricultural purposes.

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

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

19 "39-51-204. Exclusions from definition of employment.

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

21 (a) agricultural labor, except as provided in
22 39-51-203(8);

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

1 (c) service performed as an officer or member of the
2 crew of a vessel on the navigable waters of the United
3 States;

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) in the employ of a church or convention or
 2 association of churches or an organization which is operated
 3 primarily for religious purposes and which is operated,
 4 supervised, controlled, or principally supported by a church
 5 or convention or association of churches;

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

10 ~~(c) in the employ of a school which is not an~~
 11 ~~institution of higher education, prior to December 31, 1977,~~

12 (d)(c) in a facility conducted for the purpose of
 13 carrying out a program of rehabilitation for individuals
 14 whose earning capacity is impaired by age or physical or
 15 mental deficiency or injury or providing remunerative work
 16 for individuals who, because of their impaired physical or
 17 mental capacity, cannot be readily absorbed in the
 18 competitive labor market by an individual receiving such
 19 rehabilitation or remunerative work;

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

25 ~~(f)(e)~~ for a state prison or other state correctional

1 or custodial institution by an inmate of that institution."

2 Section 4. Section 39-51-407, MCA, is amended to read:

3 "39-51-407. Reimbursement of fund by state. ~~(1)~~ This
4 state recognizes its obligation to replace, and hereby
5 pledges the faith of this state that funds will be provided
6 in the future and applied to the replacement of any of the
7 money received ~~after July 1, 1941~~, from the United States or
8 any agency thereof under Title III of the Social Security
9 Act, any unencumbered balances in the unemployment insurance
10 administration account ~~as of that date~~, any money thereafter
11 granted to this state pursuant to the provisions of the
12 Wagner-Peyser Act, and any money made available by the state
13 or its political subdivisions and matched by such money
14 granted to this state pursuant to the provisions of the
15 Wagner-Peyser Act which the secretary of labor finds have,
16 because of any action or contingency, been lost or have been
17 expended for purposes other than or in amounts in excess of
18 those found necessary by the secretary of labor for the
19 proper administration of this chapter. Such money shall be
20 promptly supplied by money furnished by the state of Montana
21 or any of its subdivisions for the use of the department and
22 used only for purposes approved by the secretary of labor.
23 The department shall, if necessary, promptly report to the
24 governor and the governor to the legislature the amount
25 required for such replacement.

1 ~~(2) This section shall not be construed to relieve~~
2 ~~this state of its obligation with respect to funds received~~
3 ~~prior to July 1, 1941 pursuant to the provisions of Title~~
4 ~~III of the Social Security Act."~~

5 Section 5. Section 39-51-1101, MCA, is amended to
6 read:

7 "39-51-1101. Commencement and termination of coverage
8 under chapter. (1) Any employing unit which is or becomes an
9 employer subject to this chapter within any calendar year
10 shall be subject to this chapter during the whole of such
11 calendar year, except that this subsection shall not apply
12 to an employing unit electing coverage as provided for in
13 39-51-1102.

14 (2) Except as otherwise provided in 39-51-1102, an
15 employing unit shall cease to be an employer subject to this
16 chapter only as of January 1 of any calendar year only if it
17 files with the department prior to the last day of February
18 of such year a written application for termination of
19 coverage and the department finds that the total wages
20 payable for employment by said employer in the preceding
21 calendar year did not exceed \$500 \$1,000. For the purpose of
22 this subsection, the two or more employing units mentioned
23 in subsection (2) or (3) of 39-51-202 shall be treated as a
24 single employing unit."

25 Section 6. Section 39-51-1109, MCA, is amended to

1 read:

2 "39-51-1109. Tax appeals. Any person aggrieved by any
3 decision, determination, or redetermination of the
4 department involving contribution liability, contribution
5 rate, application for refund, or the charging of benefit
6 payments to employers making payment in lieu of
7 contributions is entitled to a review in accordance with
8 Title 2, chapter 4, parts 6 and 7. Such decision,
9 determination, or redetermination is final unless an
10 interested party entitled to notice thereof applies for a
11 review within 10 days after notification was mailed to the
12 last known address, provided that the period may be extended
13 for good cause."

14 Section 7. Section 39-51-1121, MCA, is amended to
15 read:

16 "39-51-1121. Definitions. As used in this part and
17 part 12, the following definitions apply:

18 (1) "Computation date" means the reporting period
19 ending September 30 preceding the calendar year for which a
20 covered employer's contribution rate is effective.

21 (2) "Cutoff date" means December 31 immediately
22 following the computation date. The department may extend
23 the cutoff date in meritorious cases.

24 (3) "Deficit employer" means a--covered-employer an
25 employer who is subject under this chapter and who has

1 established a record of accumulated benefits charged to his
2 the employer's account in excess of his the employer's
3 accumulated contributions paid as of the cutoff date and has
4 a-minus-experience-factor.

5 (4) "Department" means the department of labor and
6 industry.

7 (5) "Eligible employer" means a--covered-employer an
8 employer who is subject under this chapter for the 3 years
9 immediately preceding the computation date and who has:

10 (a) paid-contributions-during-each--of--the--3--fiscal
11 years--immediately--preceding-the-computation-date filed all
12 contribution reports prescribed by the department;

13 (b) with-respect-to-such-3--fiscal--years,--filed--all
14 contribution--reports--prescribed-by-the-department paid all
15 contributions and assessments under 39-51-404(4), and
16 penalties and interest thereon;

17 (c) paid--all--contributions-due-with-respect-to-the-3
18 fiscal-years--before--the--cutoff--date--of--the--rate--year
19 established a record of accumulated contributions in excess
20 of benefits charged to the employer's account; and

21 (d) established-a-record-of-accumulated--contributions
22 in-excess-of-benefits-charged-to-his-account,--and paid wages
23 in at least 1 of the 8 calendar quarters preceding the
24 computation date.

25 fe)--achieved-a-plus-experience-factor.

1 (6) "Fiscal year" means the four consecutive calendar
2 quarters ending on September 30.

3 (7) "Governmental entities" means the state or any
4 political subdivision of the state or an instrumentality of
5 the state or a political subdivision, including any
6 employing unit funded directly by tax levies.

7 (8) "Unrated employer" means ~~a covered employer who~~
8 ~~has not paid contributions in each of the 3 fiscal years~~
9 ~~immediately preceding the computation date or an employer~~
10 ~~who has established a record of accumulated contributions in~~
11 ~~excess of benefits charged to his account but has not filed~~
12 ~~all required payroll reports or paid contributions by the~~
13 ~~cutoff date for any of the quarters in the 3 fiscal years~~
14 ~~immediately preceding the computation date~~ an employer who
15 is subject under this chapter and who does not meet all the
16 criteria of an eligible or a deficit employer."

17 Section 8. Section 39-51-1125, MCA, is amended to
18 read:

19 "39-51-1125. Computation of payments in lieu of
20 contributions. (1) Qualified After June 30, 1987, qualified
21 employers electing to make payments in lieu of contributions
22 shall pay into the fund an amount equivalent to the full
23 amount of regular benefits plus one-half of the amount the
24 state's share of extended benefits paid to individuals based
25 on wages paid by the employing unit. After December 31,

1 1978, governmental entities shall pay the full amount of
2 extended benefits.

3 (2) If benefits paid an individual are based on wages
4 paid by both the employer and one or more other employers,
5 the amount payable by any one employer to the fund bears the
6 same ratio to total benefits paid to the individual as the
7 base period wages paid to the individual by such employer
8 bear to the total amount of base period wages paid to the
9 individual by all his the individual's base period
10 employers.

11 (3) If the base period wages of an individual include
12 wages from more than one such employer, the amount to be
13 paid into the fund with respect to the benefits paid to the
14 individual shall be prorated among the liable employers in
15 proportion to the wages paid to the individual by each such
16 employer during the base period.

17 (4) The amount of payment required from employers
18 shall be ascertained by the department monthly and becomes
19 due and payable by the employer quarterly as directed in
20 this chapter. Penalty and interest for delinquency shall be
21 assessed such employers as specified in 39-51-1301.

22 ~~(5) A nonprofit organization which elects to make~~
23 ~~payments in lieu of contributions into the unemployment~~
24 ~~insurance fund is not liable to make such payments with~~
25 ~~respect to the benefits paid to any individual whose base~~

1 ~~period--wages--include--wages---for---previously---uncovered~~
 2 ~~services,--as-defined-in-39-51-284(3)(c),--to-the-extent-that~~
 3 ~~the-unemployment--insurance--fund--is--reimbursed--for--such~~
 4 ~~benefits-pursuant-to-section-121-of-Public-law-94-566-~~"

5 Section 9. Section 39-51-1213, MCA, is amended to
 6 read:

7 "39-51-1213. Classification of employers for
 8 experience rating purposes. (1) The department shall for
 9 each calendar year classify employers in accordance with
 10 their actual experience in the payment of contributions and
 11 with respect to benefits charged against their accounts,
 12 with contribution rates reflecting benefit experience. Each
 13 employer's rate for a calendar year shall be determined on
 14 the basis of his the employer's record as of October 1 of
 15 the preceding calendar year.

16 (2) In making the classification, each eligible and
 17 deficit employer's contribution rate is determined in the
 18 manner set forth below:

19 (a) Each employer is given an "experience factor"
 20 which is contributions paid since October 1, 1981, minus
 21 benefits charged on each employer's account since October 1,
 22 1981, divided by his the employer's average annual taxable
 23 payroll rounded to the next lower dollar amount for the 3
 24 fiscal years immediately preceding the computation date. The
 25 computation of the "experience factor" shall be to six

1 decimal places.

2 (b) Schedules shall be prepared listing all eligible
 3 and deficit employers in inverse numerical order of their
 4 experience factors. There shall be listed on such schedules
 5 for each employer in addition to the experience factor:

6 (i) the amount of his the employer's taxable payroll
 7 for the fiscal year ending on the computation date; and

8 (ii) the cumulative total consisting of the sum of the
 9 employer's taxable payroll for the fiscal year ending on the
 10 computation date and the corresponding taxable payrolls for
 11 all other employers preceding him that employer on the
 12 schedules.

13 (3) The cumulative taxable payroll amounts listed on
 14 the schedules provided for in 39-51-1218 shall be segregated
 15 into groups that will yield approximately the average tax
 16 rate according to the tax schedule assigned for that
 17 particular taxable year. Each group shall be identified by
 18 the rate class number listed in the table which represents
 19 the percentage limits of each group. Each employer on the
 20 schedules is assigned that contribution rate opposite his
 21 that employer's rate class for the tax schedule in effect
 22 for the taxable year.

23 (4) (a) If the grouping of rate classes requires the
 24 inclusion of exactly one-half of an employer's taxable
 25 payroll, the employer is assigned the lower of the two rates

1 designated for the two classes in which the halves of his
2 that employer's taxable payroll are so required.

3 (b) If the group of rate classes requires the
4 inclusion of a portion other than exactly one-half of an
5 employer's taxable payroll, the employer is assigned the
6 rate designated for the class in which the greater part of
7 his that employer's taxable payroll is so required.

8 (c) If one or more employers on the schedules have
9 experience factors identical to that of the last employer
10 included in a particular rate class, all such employers are
11 included in and assigned the contribution rate specified for
12 such class, notwithstanding the provisions of 39-51-1214.

13 (5) If the taxable payroll amount or the experience
14 factor or both such taxable payroll amount and experience
15 factor of any eligible or deficit employer listed on the
16 schedules is changed, the employer is placed in that
17 position on the schedules which he the employer would have
18 occupied had his that employer's taxable payroll amount or
19 experience factor as changed been used in determining his
20 that employer's position in the first instance, but such
21 change does not affect the position or rate classification
22 of any other employer listed on the schedules and does not
23 affect the rate determination for previous years.

24 (6) Deficit employers who have not filed all required
25 payroll reports or paid all contributions due by the cutoff

1 date must be assigned the maximum contribution rate in
2 effect for the taxable year."

3 Section 10. Section 39-51-1219, MCA, is amended to
4 read:

5 "39-51-1219. Procedures for the substitution, merger,
6 or acquisition of an employer account by a successor
7 employing unit. (1) Subject to the provisions of subsection
8 (3), whenever any individual or organization (whether or not
9 a covered employer) in any manner succeeds to or acquires
10 all or substantially all of the business of an employer who
11 at the time of acquisition was a covered employer and
12 whenever in respect to whom the department finds that the
13 business of the predecessor is continued solely by the
14 successor:

15 (a) the separate account and the actual contribution,
16 benefit, and taxable payroll experience of the predecessor
17 shall, upon the joint application of the predecessor and the
18 successor within 90 days after such acquisition and approval
19 by the department, be transferred to the successor employer
20 for the purpose of determining the successor's liability and
21 rate of contribution; and

22 (b) any successor who was not an employer on the date
23 of acquisition becomes a covered employer as of such date.

24 (2) Whenever any individual or organization (whether
25 or not a covered employer) in any manner succeeds to or

1 acquires part of the business of an employer who at the time
2 of acquisition was a covered employer and whenever such
3 portion of the business is continued by the successor:

4 (a) so much of the separate account and the actual
5 contribution, benefit, and taxable payroll experience of the
6 predecessor as is attributable to the portion of the
7 business transferred, as determined on a pro rata basis in
8 the same ratio that the wages of covered employees properly
9 allocable to the transferred portion of the business bears
10 to the payroll of the predecessor in the last four completed
11 calendar quarters immediately preceding the date of
12 transfer, shall, upon the joint application of the
13 predecessor and the successor within 90 days after such
14 acquisition and approval by the department, be transferred
15 to the successor employer for the purpose of determining the
16 successor's liability and rate of contribution; and

17 (b) any successor who was not an employer on the date
18 of acquisition becomes a covered employer as of such date.

19 (3) (a) The 90-day period may be extended at the
20 discretion of the department.

21 (b) Whenever a predecessor covered employer has a
22 deficit experience rating account as of the last computation
23 date, the transfer provided for in subsections (1) and (2)
24 is mandatory except when it is shown by substantial evidence
25 that neither the management, or ownership, or nor both the

1 management and ownership are not substantially the same for
2 the successor as for the predecessor, in which case the
3 successor shall begin with the rate of a new employer.
4 Whenever such mandatory transfer involves only a portion of
5 the experience rating record and the predecessor or
6 successor employers fail to supply the required payroll
7 information within 10 days after notice, the transfer shall
8 be based on estimates of the applicable payrolls.

9 (4) (a) If the successor was a covered employer prior
10 to the date of the acquisition of all or a part of the
11 predecessor's business, his the successor's rate of
12 contribution, effective the first day of the calendar year
13 immediately following the date of acquisition, is based on
14 the combined experience of the predecessor and successor.

15 (b) If the successor was not a covered employer prior
16 to the date of the acquisition of all or a part of the
17 predecessor's business, his the successor's rate is the rate
18 applicable to the predecessor with respect to the period
19 immediately preceding the date of acquisition, but if there
20 was more than one predecessor, the successor's rate shall be
21 a newly computed rate based on the combined experience of
22 the predecessors, becoming effective immediately after the
23 date of acquisition and remaining in effect for the balance
24 of the rate year."

25 Section 11. Section 39-51-1301, MCA, is amended to

1 read:

2 "39-51-1301. (Temporary) Penalty and interest on
3 past-due contributions. (1) Contributions unpaid on the date
4 on which they are due and payable, as provided by
5 subsections (1) and (2) of 39-51-1103 and 39-51-1125, that
6 are paid ~~within-20-days--after~~ by the end of the month
7 following the due date shall be subject to a penalty
8 assessment of \$10 or 10% of the contribution due, whichever
9 is greater. If the contributions are not paid ~~within-20~~
10 ~~days-after~~ by the end of the month following the due date,
11 the employer shall be subject to a penalty assessment of \$15
12 or 15% of the contributions due, whichever is greater. All
13 past-due contributions shall bear interest at the rate of
14 18% a year, to be prorated on a daily basis.

15 (2) A penalty of \$40 shall be assessed whenever, as
16 the result of a willful refusal of an employer to furnish
17 wage information or pay contributions on time, the
18 department issues a subpoena to obtain wage information or
19 makes a summary or jeopardy assessment pursuant to
20 39-51-1302.

21 (3) There is an account in the federal special revenue
22 fund. Penalties and interest collected under this section
23 must be deposited in that account. Money deposited in that
24 account and appropriated to the department must be used by
25 the department to administer this chapter and for programs

1 to train and retrain unemployed and underemployed persons.
2 Money in the account not appropriated for these purposes
3 must be transferred by the department to the unemployment
4 insurance trust fund at the end of each fiscal year.

5 (4) When failure to pay contributions on time was not
6 caused by willful intent of the employer, the department may
7 abate the penalty and interest.

8 (5) All money accruing to the unemployment insurance
9 trust fund from interest and penalties collected on past-due
10 contributions must be used solely for the payment of
11 unemployment insurance benefits and may not be used for any
12 other purpose.

13 39-51-1301. (Effective July 1, 1989) Penalty and
14 interest on past-due contributions. (1) Contributions unpaid
15 on the date on which they are due and payable, as provided
16 by subsections (1) and (2) of 39-51-1103 and 39-51-1125,
17 that are paid ~~within-20-days-after~~ by the end of the month
18 following the due date shall be subject to a penalty
19 assessment of \$10 or 10% of the contribution due, whichever
20 is greater. If the contributions are not paid ~~within-20~~
21 ~~days-after~~ by the end of the month following the due date,
22 the employer shall be subject to a penalty assessment of \$15
23 or 15% of the contributions due, whichever is greater. All
24 past-due contributions shall bear interest at the rate of
25 18% a year, to be prorated on a daily basis.

1 (2) A penalty of \$40 shall be assessed whenever, as
 2 the result of a willful refusal of an employer to furnish
 3 wage information or pay contributions on time, the
 4 department issues a subpoena to obtain wage information or
 5 makes a summary or jeopardy assessment pursuant to
 6 39-51-1302.

7 (3) Interest and penalties collected pursuant to this
 8 section shall be paid into the unemployment insurance trust
 9 fund.

10 (4) When failure to pay contributions on time was not
 11 caused by willful intent of the employer, the department may
 12 abate the penalty and interest.

13 (5) All money accruing to the unemployment insurance
 14 trust fund from interest and penalties collected on past-due
 15 contributions must be used solely for the payment of
 16 unemployment insurance benefits and may not be used for any
 17 other purpose."

18 Section 12. Section 39-51-1303, MCA, is amended to
 19 read:

20 "39-51-1303. Collection of unpaid contributions by
 21 civil action. (1) If, after due notice, any employer
 22 defaults in any payment of contributions or interest
 23 thereon, the department may ~~in~~ at its discretion initiate a
 24 civil action in the name of the Montana department of labor
 25 and industry to collect the amount due, and the employer

1 adjudged in default shall pay the costs of such action. The
 2 venue for such action may, in the discretion of the
 3 department, be in Lewis and Clark County.

4 (2) An action for the collection of contributions due
 5 must be brought within 5 years after the due date of such
 6 contributions or it is barred.

7 (3) The department may pursue its remedy under either
 8 this section or 39-51-1304, or both."

9 Section 13. Section 39-51-1304, MCA, is amended to
 10 read:

11 "39-51-1304. Lien for payment of unpaid contributions
 12 and assessments -- levy and execution. Unpaid contributions
 13 and assessments under 39-51-404(4), including penalties and
 14 interest assessed thereon, have the effect of a judgment
 15 against the employer, arising at the time ~~the contributions~~
 16 such payments are due. The department may issue a
 17 certificate of lien setting forth the amount of
 18 contributions-due-and--accrued--interest payments due and
 19 directing the clerk of the district court of any county of
 20 the state to enter the certificate as a judgment in the
 21 docket pursuant to 25-9-301. From the time the judgment is
 22 docketed, it becomes a lien upon all real and personal
 23 property of the employer. After the due process requirements
 24 of 39-51-1109 and 39-51-2403 have been satisfied, the
 25 department may enforce the judgment pursuant to Title 25,

1 chapter 13, except that the department may enforce the
2 judgment at any time within 10 years of the creation of the
3 lien."

4 Section 14. Section 39-51-2101, MCA, is amended to
5 read:

6 "39-51-2101. Total unemployment -- when. An individual
7 shall be deemed totally unemployed in any week during which
8 he the individual performed no work and earned no wages or a
9 week of less than full-time work with wages of less than 2
10 times his the individual's weekly benefit amount. No
11 individual ~~is unemployed in any week that he is~~
12 ~~self-employed."~~

13 Section 15. Section 39-51-2105, MCA, is amended to
14 read:

15 "39-51-2105. Qualifying wages. ~~(1) To qualify as an~~
16 ~~insured worker an individual must have been paid wages for~~
17 ~~insured work in the quarters of his base period an amount~~
18 ~~totaling not less than 1 1/2 times his base period high~~
19 ~~quarter wages.~~

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

25 ~~(3) With respect to weeks of unemployment beginning on~~

1 ~~or after January 1, 1978, wages for insured work shall~~
2 ~~include wages paid for previously uncovered services. For~~
3 ~~the purposes of this subsection, the term "previously~~
4 ~~uncovered services" means services:~~

5 ~~(a) which were not employment as defined in~~
6 ~~39-51-204(1)(a) and (1)(b) at any time during the 1-year~~
7 ~~period ending December 31, 1975; and~~

8 ~~(b) which:~~

9 ~~(i) are agricultural labor, as defined in~~
10 ~~39-51-203(8); or domestic service, as defined in~~
11 ~~39-51-203(9); or~~

12 ~~(ii) are services performed by an employee of this~~
13 ~~state or a political subdivision thereof, as provided in~~
14 ~~39-51-203(5); or by an employee of a nonprofit educational~~
15 ~~institution which is not an institution of higher education,~~
16 ~~as provided in 39-51-203(6); except to the extent that~~
17 ~~assistance under Title II of the Emergency and~~
18 ~~Unemployment Assistance Act of 1974 was paid on the basis of~~
19 ~~such services."~~

20 Section 16. Section 39-51-2303, MCA, is amended to
21 read:

22 "39-51-2303. Disqualification for discharge due to
23 misconduct. An individual shall be disqualified for benefits
24 if he has been after being discharged:

25 (1) for misconduct connected with his the individual's

1 work or affecting his the individual's employment until an
2 the individual has performed services, other than
3 self-employment, for which remuneration is received equal to
4 or in excess of eight times his the individual's weekly
5 benefit amount subsequent to the week in which the act
6 causing the disqualification occurred.

7 (2) for gross misconduct connected with his the
8 individual's work or committed on the employer's premises,
9 as determined by the department, for a period of ~~12-months~~
10 52 weeks."

11 Section 17. Section 39-51-2304, MCA, is amended to
12 read:

13 "39-51-2304. Disqualification for failure to apply for
14 or to accept suitable work. (1) ~~Effective-April-17-1977;-an~~
15 An individual is disqualified for benefits if he the
16 individual fails without good cause either to apply for
17 available and suitable work when so directed by the
18 employment office or the department or to accept an offer of
19 suitable work offered--to--him which he the individual is
20 physically able and mentally qualified to perform or to
21 return to his customary self-employment, if any, when so
22 directed by the department. Such disqualification continues
23 for the week in which such failure occurs and until the
24 individual has performed services, other than
25 self-employment, for which remuneration is received equal to

1 or in excess of his six times that individual's weekly
2 benefit amount ~~in-6-separate-weeks~~ subsequent to the date
3 the act causing the disqualification occurred, with 6 weeks'
4 reduction in benefit duration, as determined by the
5 department, provided he the individual has not left this
6 work under disqualifying circumstances.

7 (2) In determining whether or not any work is suitable
8 for an individual, the department shall consider the degree
9 of risk involved to his the individual's health, safety, and
10 morals, his the individual's physical fitness and prior
11 training, his experience and previous earnings, his length
12 of unemployment and prospects for securing local work in his
13 the customary occupation, and the distance of the available
14 work from his the individual's residence.

15 (3) Notwithstanding any other provisions of this
16 chapter, including subsection (4), no work may be considered
17 suitable and benefits may not be denied under this chapter
18 to any otherwise eligible individual for refusing to accept
19 new work under any of the following conditions:

20 (a) if the position offered is vacant due directly to
21 a strike, lockout, or other labor dispute;

22 (b) if the wages, hours, or other conditions of the
23 work offered are substantially less favorable to the
24 individual than those prevailing for similar work in the
25 locality;

1 (c) if, as a condition of being employed, the
2 individual would be required to join a company union or to
3 resign from or refrain from joining any bona fide labor
4 organization.

5 (4) Subject to subsection (3), after 13 weeks of
6 unemployment, suitable work is work that meets the criteria
7 in this section and that offers 75% of the individual's
8 earnings in his previous insured work in his the
9 individual's customary occupation. No individual, however,
10 is required to accept a job paying less than the federal
11 minimum wage."

12 Section 18. Section 39-51-2402, MCA, is amended to
13 read:

14 "39-51-2402. Initial determination -- redetermination.

15 (1) A representative designated by the department and
16 hereinafter referred to as a deputy shall promptly examine
17 the claim and, on the basis of the facts found by him the
18 deputy, shall either determine whether or not such claim is
19 valid and, if valid, the week with respect to which benefits
20 shall commence, the weekly benefit amount payable, and the
21 maximum duration thereof or shall refer such claim or any
22 question involved therein to an appeals referee who shall
23 make his the decision with respect thereto in accordance
24 with the procedure prescribed in 39-51-2403. The deputy
25 shall promptly notify the claimant and any other interested

1 party of the decision and the reasons therefor.

2 (2) The deputy may for good cause reconsider his the
3 decision and shall promptly notify the claimant and such
4 other interested parties of his the amended decision and the
5 reasons therefor.

6 (3) No determination or redetermination of an initial
7 or additional claim shall be made under this section unless
8 5 days' notice of the time and place of the claimant's
9 interview for examination of the claim is mailed to each
10 interested party.

11 (4) A determination or redetermination shall be deemed
12 final unless an interested party entitled to notice thereof
13 applies for reconsideration of the determination or appeals
14 therefrom within ~~5-days-after-delivery-of-such--notification~~
15 ~~or--within--7~~ 10 days after such notification was mailed to
16 his the interested party's last known address, provided that
17 such period may be extended for good cause."

18 Section 19. Section 39-51-2403, MCA, is amended to
19 read:

20 "39-51-2403. Decision of appeals referee. After a
21 hearing, an appeals referee shall make findings and
22 conclusions promptly and on the basis thereof affirm,
23 modify, or reverse the deputy's determination or
24 redetermination. Each interested party shall be furnished
25 promptly a copy of the decision and the supporting findings

1 and conclusions. This decision shall be final unless
 2 further review is initiated pursuant to 39-51-2404 within 5
 3 ~~days-after-delivery-of-such-notification-or-within-7~~ 10 days
 4 after such notification was mailed to ~~his~~ the interested
 5 party's last known address, provided that such period may be
 6 extended for good cause."

7 Section 20. Section 39-51-2410, MCA, is amended to
 8 read:

9 "39-51-2410. Finality of board's decision -- judicial
 10 review. (1) Any decision of the board in the absence of an
 11 appeal therefrom as herein provided shall become final 30
 12 days after the date of notification or mailing thereof,
 13 ~~except--in--the--case--of--the--department--when--such--decision~~
 14 ~~becomes--final--20--days--following--the--board's--decision,~~ and
 15 judicial review thereof shall be permitted only after any
 16 party claiming to be aggrieved thereby has exhausted his all
 17 remedies before the board. ~~The department shall be deemed to~~
 18 ~~be a party to any judicial action involving any such~~
 19 ~~decision and may be represented in any such action by an~~
 20 ~~attorney employed by the department or at the department's~~
 21 ~~request, by the attorney general.~~

22 (2) Within 30 days after the date of notification or
 23 mailing of the decision of the board, any party aggrieved
 24 thereby may secure judicial review thereof by commencing an
 25 action in the district court of the county in which said

1 party resides and in which action any other party to the
 2 proceeding before the board shall be made a defendant. In
 3 such action a petition, which need not be verified but which
 4 shall state the grounds upon which a review is sought, shall
 5 be served upon the commissioner of labor and industry and
 6 all other interested parties in the manner provided in the
 7 Montana Rules of Civil Procedure.

8 (3) ~~With--its--answer,~~ The department shall certify
 9 and file with said court all documents and papers and a
 10 transcript record of all testimony taken in the matter,
 11 together with the board's findings of fact and decision.
 12 The board may also in its discretion certify to such court
 13 questions of law involved in any decision by it.

14 (4) Whenever the department seeks review of a decision
 15 of the board, all interested parties shall be served with a
 16 copy of its petition together with all documents filed with
 17 the court.

18 (5) In any judicial proceeding under 39-51-2406
 19 through 39-51-2410, the findings of the board as to the
 20 facts, if supported by evidence and in the absence of fraud,
 21 shall be conclusive and the jurisdiction of said court shall
 22 be confined to questions of law. Such action and the
 23 questions so certified shall be heard in a summary manner
 24 and shall be given precedence over all other civil cases
 25 ~~except--cases--arising--under--the--workers'-compensation--law--of~~

1 ~~this-state.~~

2 (6) An appeal may be taken from the decision of the
3 district court to the supreme court of Montana in the same
4 manner, but not inconsistent with the provisions of this
5 chapter, as is provided in civil cases. It shall not be
6 necessary in any judicial proceeding under this section to
7 enter exceptions to the rulings of the board and no bond
8 shall be required for entering such appeal. Upon the final
9 determination of such judicial proceeding, the department
10 shall enter an order in accordance with such determination."

11 Section 21. Section 39-51-2501, MCA, is amended to
12 read:

13 "39-51-2501. Definitions. As used in this part, unless
14 the context clearly requires otherwise, the following
15 definitions apply:

16 (1) "Extended benefit period" means a period which:

17 (a) begins with the third week after a week for which
18 there is a state "on" indicator, provided that no extended
19 benefit period may begin by reason of a state "on" indicator
20 before the 14th week following the end of a prior extended
21 benefit period which was in effect with respect to this
22 state; and

23 (b) ends with the third week after the first week for
24 which there is a state "off" indicator or the 13th
25 consecutive week of such period.

1 (2) (a) "Rate of insured unemployment", for purposes
2 of 39-51-2504 and 39-51-2505, means the percentage derived
3 by dividing the average weekly number of individuals filing
4 claims for regular benefits in this state for weeks of
5 unemployment with respect to the most recent
6 13-consecutive-week period, as determined by the department
7 on the basis of its reports to the U.S. secretary of labor,
8 by the average monthly employment covered under this chapter
9 for the first 4 of the most recent 6 completed calendar
10 quarters ending before the end of such 13-week period.

11 (b) Computations required by the provisions of
12 subsection (2)(a) shall be made by the department in
13 accordance with regulations prescribed by the U.S. secretary
14 of labor.

15 (3) "Regular benefits" means benefits payable to an
16 individual under this chapter or under any other state law,
17 including benefits payable to federal civilian employees and
18 to ex-servicemen ex-service personnel pursuant to 5 U.S.C.
19 chapter 85, other than extended benefits.

20 (4) "Extended benefits" means benefits, including
21 benefits payable to federal civilian employees and to
22 ex-servicemen ex-service personnel pursuant to 5 U.S.C.
23 chapter 85, payable to an individual under the provisions of
24 this part for weeks of unemployment in his the individual's
25 eligibility period.

1 (5) "Eligibility period", ~~of-an-individual~~ relating to
 2 extended benefits, means the period consisting of the weeks
 3 in ~~his~~ the individual's benefit year which begin in an
 4 extended benefit period and, if ~~his~~ the individual's benefit
 5 year ends within such extended benefit period, any weeks
 6 thereafter which begin in such period.

7 (6) "Exhaustee" means an individual who, with respect
 8 to any week of unemployment in ~~his~~ the eligibility period:

9 (a) has received, prior to such week, all of the
 10 regular benefits that were available ~~to--him~~ under this
 11 chapter or any other state law, including dependents'
 12 allowances and benefits payable to federal civilian
 13 employees and ~~ex-servicemen~~ ex-service personnel under 5
 14 U.S.C. chapter 85, in ~~his~~ the current benefit year that
 15 includes such week; provided that, for the purposes of this
 16 subsection, an individual shall be deemed to have received
 17 all of the regular benefits that were available ~~to--him~~
 18 although, as a result of a pending appeal with respect to
 19 wages that were not considered in the original monetary
 20 determination ~~in-his~~ of the benefit year, ~~he~~ the individual
 21 may subsequently be determined to be entitled to added
 22 regular benefits;

23 (b) ~~his~~ the benefit year having expired prior to such
 24 week, has no or insufficient wages on the basis of which ~~he~~
 25 the individual could establish a new benefit year that would

1 include such week;

2 (c) has no right to unemployment benefits or
 3 allowances, as the case may be, under the Railroad
 4 Unemployment Insurance Act, ~~the Trade Expansion Act of 1962,~~
 5 ~~the Automotive Products Trade Act of 1965,~~ and such other
 6 federal laws as are specified in regulations issued by the
 7 U.S. secretary of labor; and

8 (d) has not received and is not seeking unemployment
 9 benefits under the unemployment compensation law of Canada,
 10 but if ~~he~~ the individual is seeking such benefits and the
 11 appropriate agency finally determines that ~~he~~ the individual
 12 is not entitled to benefits under such law, ~~he~~ the
 13 individual is considered an exhaustee.

14 (7) "State law" means the unemployment insurance law
 15 of any state approved by the U.S. secretary of labor under
 16 section 3304 of the Internal Revenue Code of 1954."

17 Section 22. Section 39-51-3105, MCA, is amended to
 18 read:

19 "39-51-3105. Assignment, pledge, or encumbrance of
 20 right to benefits void -- benefits exempt from levy,
 21 execution, attachment, or other remedy for collection of
 22 debt -- exception. Any assignment, pledge, or encumbrance of
 23 any right to benefits which are or may become due or payable
 24 under this chapter shall be void, and such rights to
 25 benefits shall be exempt from levy, execution, attachment,

1 or any other remedy whatsoever provided for the collection
 2 of debt, and benefits received by any individual, so long as
 3 they are not mingled with other funds of the recipient,
 4 shall be exempt from any remedy whatsoever for the
 5 collection of all debts except debts---incurred---for
 6 necessities--furnished--to--such--individual--or--his--spouse--or
 7 dependents--during--the--time--when--such---individual---was
 8 unemployed as provided in 39-51-3106. Any waiver of any
 9 exemption provided for in this section shall be void."

10 Section 23. Section 39-51-3202, MCA, is amended to
 11 read:

12 "39-51-3202. Making false statement or representation
 13 or failing to disclose material fact in order to obtain or
 14 increase benefits -- criminal penalty. (1) A person who, in
 15 order to obtain or increase for himself personal gain or for
 16 any other person benefits under this chapter or under an
 17 employment security law of any other state or territory or
 18 the federal government, knowingly makes a false statement or
 19 representation or knowingly fails to disclose a material
 20 fact is guilty of a crime under 45-7-203, and the department
 21 may cause criminal proceedings to be initiated against him
 22 the person.

23 (2) A person will be required to repay to the
 24 department an amount as determined by 39-51-3201(2).

25 (3) For purposes of this section, restitution awarded

1 under this section must include a sum equal to the amount
 2 wrongfully received plus 18% interest a year notwithstanding
 3 the provisions of 25-9-205."

4 Section 24. Section 39-51-3206, MCA, is amended to
 5 read:

6 "39-51-3206. Liability--for--wrongful--or--improper
 7 receipt--of--benefits Collection of benefit overpayments. Any
 8 person--who,--by--reason--of--the--nondisclosure--or
 9 misrepresentation--by--him--or--by--another--of--a--material--fact,
 10 irrespective--of--whether--such--nondisclosure--or
 11 misrepresentation--was--known--or--fraudulent,--has--received--any
 12 sum--as--benefits--under--this--chapter--while--any--conditions--for
 13 the--receipt--of--benefits--imposed--by--this--chapter--were--not
 14 fulfilled--in--his--case--or--while--he--was--disqualified--from
 15 receiving--benefits--shall,--in--the--discretion--of--the
 16 department,--either--be--liable--to--have--such--sum--deducted--from
 17 any--future--benefits--payable--to--him--under--this--chapter--or
 18 shall--be--liable--to--repay--to--the--department--for--the
 19 unemployment--insurance--fund--a--sum--equal--to--the--amount--so
 20 received--by--him--and--such--sum--shall--be--collectible--in--the
 21 manner--provided--in--this--chapter--for--the--collection--of--past
 22 due--contributions. An--action--for--collection--of--overpaid
 23 benefits--must--be--brought--within--5--years--after--the--date--of
 24 such--overpayment--or--it--is--barred. A person who receives
 25 benefits not authorized by this chapter shall repay to the

1 department either directly or, as authorized by the
 2 department, by offset of future benefits to which the
 3 claimant may be entitled, or by a combination of both
 4 methods, a sum equal to the amount of the overpayment. The
 5 sum is collectible in the manner provided in this chapter
 6 for the collection of past due contributions unless the
 7 department finds that the benefits were received through no
 8 fault of the person and the recovery of the benefits would
 9 be against equity and good conscience. An action for
 10 collection of overpaid benefits must be brought within 5
 11 years after the date of the overpayment. Notwithstanding any
 12 other provision of this chapter, the department may recover
 13 an overpayment of benefits paid to any individual under this
 14 state or another state law or under an unemployment benefit
 15 program of the United States."

16 NEW SECTION. Section 25. Authority to determine
 17 uncollectibility of debts -- transfer of debts for
 18 collection -- liability for payment of fees and costs of
 19 collection. (1) After making all reasonable efforts to
 20 collect unpaid contribution assessments under 39-51-404(4),
 21 and penalties and interest thereon, or overpaid benefits
 22 under 39-51-3206 and interest thereon, the department may
 23 determine a debt to be uncollectible. Upon determining that
 24 a debt is uncollectible, the department may transfer the
 25 debt to the department of revenue for collection as provided

1 in 17-4-104.

2 (2) Subject to approval by the department, reasonable
 3 fees or costs of collection incurred by the department of
 4 revenue may be added to the amount of the debt, including
 5 added fees or costs. The debtor is liable for repayment of
 6 the amount of the debt, plus fees or costs added pursuant to
 7 this subsection. All money collected must be returned to the
 8 department to be applied to the debt, except that all fees
 9 or costs collected must be retained by the department of
 10 revenue. If less than the full amount of the debt is
 11 collected, the department of revenue shall retain only a
 12 proportionate share of the collection fees or costs.

13 Section 26. Section 18-4-241, MCA, is amended to read:
 14 "18-4-241. Authority to remove or suspend from
 15 vendors' list. (1) The department may remove a person for
 16 cause from consideration for award of contracts. The removal
 17 may not be for a period of more than 3 years.

18 (2) The department may suspend a person from
 19 consideration for award of contracts if there is probable
 20 cause to believe that the person has engaged in activities
 21 that may lead to removal. The suspension may not be for a
 22 period exceeding 3 months unless an indictment has been
 23 issued for an offense that would be a cause for removal
 24 under subsection (3), in which case the suspension must, at
 25 the request of the attorney general, remain in effect until

1 after the trial of the suspended person. The authority to
2 remove or suspend must be exercised in accordance with rules
3 adopted by the department.

4 (3) The causes for removal or suspension include the
5 following:

6 (a) violation of contract provisions, as set forth in
7 (i) and (ii) of this subsection, of a character which is
8 regarded by the department to be so serious as to justify
9 removal action:

10 (i) deliberate failure without good cause to perform
11 in accordance with the specifications or within the time
12 limit provided in the contract; or

13 (ii) a recent record of failure to perform or of
14 unsatisfactory performance in accordance with the terms of
15 one or more contracts, provided that failure to perform or
16 unsatisfactory performance caused by acts beyond the control
17 of the contractor may not be considered to be a basis for
18 removal;

19 (b) failure to respond to a number of solicitations
20 over a period of time as determined by the department in
21 accordance with rules, and after adequate written notice to
22 the affected person of the intent to remove or suspend; and

23 (c) any other cause the department determines to be so
24 serious and compelling as to affect responsibility as a
25 state contractor, including removal by another governmental

1 entity for any cause listed in the department's rules; and
2 (d) failure to comply with the provisions of Title 39,
3 chapter 51, or Title 39, chapter 71.

4 (4) The department shall issue a written decision to
5 remove or suspend, stating the reasons for the action taken.
6 A copy of the decision must be mailed or otherwise furnished
7 immediately to the person involved."

8 NEW SECTION. Section 27. Extension of authority. Any
9 existing authority of the department of labor and industry
10 to make rules on the subject of the provisions of this act
11 is extended to the provisions of this act.

12 NEW SECTION. Section 28. Repealer. Section
13 39-51-2206, MCA, is repealed.

14 NEW SECTION. Section 29. Codification instruction.
15 Section 25 is intended to be codified as an integral part of
16 Title 39, chapter 51, part 32, and the provisions of Title
17 39, chapter 51, apply to section 25.

18 NEW SECTION. Section 30. Effective date. This act is
19 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB143, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws on unemployment insurance; prohibiting vendors delinquent on unemployment insurance (UI) or workers' compensation (WC) payments from being included on the state's vendor list.

There are two parts to this fiscal note:

1. revising laws on unemployment insurance; and
2. prohibiting vendors delinquent on UI or WC payments from being on state's vendor list.

PART I
ASSUMPTIONS:

Only sections 39-51-2101 and 39-51-2304 of the proposed bill have any measurable fiscal impact. Assumptions for the two sections are as follows:

39-51-2101

1. There will be approximately 200 cases involved in each year of the biennium.
2. Average duration is expected to be three weeks per case.
3. The average weekly benefit amount (AWBA) for partial pays is expected to be \$83 and \$85 for FY88 and FY89 respectively.

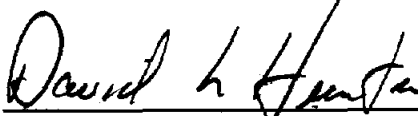
39-51-2304


1. There will be approximately three cases each year of the biennium that become eligible because of this provision.
2. Average duration for each case is expected to be eight weeks.
3. The AWBA is expected to be \$136 and \$139 respectively for FY88 and FY89.

FISCAL IMPACT:

There will be an increase in unemployment insurance benefits payments.

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Section 39-51-2101	\$55,500,000	\$55,550,000	\$ 50,000	\$58,000,000	\$58,051,000	\$ 51,000
Section 39-51-2304	\$55,500,000	\$55,503,300	\$ 3,300	\$58,000,000	\$58,003,300	\$ 3,300


DATE 1/19/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning


DATE 1/19/87
HAL HARPER, PRIMARY SPONSOR
Fiscal Note for HB143, as introduced.

HB-143

Fiscal Note Request, HB143, as introduced.

Form BD-15

Page 2

<u>Funding:</u>	<u>FY88</u>	<u>FY89</u>
Expendable Trust Fund Total (Unemployment Insurance)	\$ 53,300	\$ 54,300

Revenues:
N/A

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:
N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:
N/A

PART II
ASSUMPTIONS:

1. The phrase "failure to comply" means either to become delinquent in payment owed to the State Compensation Insurance Fund, or failure to provide Workers' Compensation coverage or delinquent in payment owed to the Unemployment Insurance Trust Fund, as required by law (become uninsured).
2. The Department of Administration, Purchasing Division, will provide the written decision to the party and will subsequently research whether requirements have been met prior to reinstatement of the party to the vendor list.
3. The Division of Workers' Compensation or Unemployment Insurance Division will not be required to identify which of its insureds are potential vendors that may provide the state with services or products. Its sole responsibility will be to provide the Department of Administration with lists of employers who fall into the categories described in Assumption 1 above and to provide assurance of adequate insurance upon request for the Department of Administration.

FISCAL IMPACT:

Expenditures:

Any additional costs will be absorbed by the current staff of the Department of Labor and Industry and the Department of Administration.

Revenues:
N/A

HB-143

Fiscal Note Request, HB143, as introduced.

Form BD-15

Page 3

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

HB-143

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 143

INTRODUCED BY HARPER, DONALDSON

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS ON UNEMPLOYMENT INSURANCE; PROHIBITING VENDORS DELINQUENT ON UNEMPLOYMENT OR WORKERS' COMPENSATION PAYMENTS FROM BEING INCLUDED ON THE STATE'S VENDOR LIST; AMENDING SECTIONS 18-4-241, 39-51-201, 39-51-203, 39-51-204, 39-51-407, 39-51-1101, 39-51-1109, 39-51-1121, 39-51-1125, 39-51-1213, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2101, 39-51-2105, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2403, 39-51-2410, 39-51-2501, 39-51-3105, 39-51-3202, AND 39-51-3206, MCA; REPEALING SECTION 39-51-2206, 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) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(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 24 months of the date on which the individual's disability was incurred.

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

(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 result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim



1 pursuant to the arrangement approved by the secretary of
 2 labor of the United States, the base period is the period
 3 applicable under the unemployment law of the paying state.

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

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

9 (7) "Contributions" means the money payments to the
 10 state unemployment insurance fund required by this chapter
 11 but does not include assessments under 39-51-404(4).

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

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

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

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

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

23 (12) "Gross misconduct" means a criminal act, other
 24 than a violation of a motor vehicle traffic law, for which
 25 an individual has been convicted in a criminal court or has

1 admitted or conduct which demonstrates a flagrant and wanton
 2 disregard of and for the rights or title or interest of a
 3 fellow employee or his the employer.

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

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

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

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

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

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

21 (b) Notwithstanding any of the foregoing provisions of
 22 this subsection, all colleges and universities in this state
 23 are institutions of higher education for purposes of this
 24 part.

25 (15) "State" includes, in addition to the states of the

1 United States of America, the District of Columbia, Puerto
 2 Rico, the Virgin Islands, and the Dominion of Canada.

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

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

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

16 (i) ~~the amount of any payment including the amount~~
 17 ~~paid by an employer for insurance or annuities or into a~~
 18 ~~fund to provide for such payment made after July 17, 1987 to~~
 19 ~~or on behalf of an employee or a dependent under a plan or~~
 20 ~~system established by an employer that makes provision for~~
 21 ~~the employee generally or for a class or classes of~~
 22 ~~employees or their dependents on account of MADE BY THE~~
 23 ~~EMPLOYER, IF THE PAYMENT WAS MADE UNDER A PLAN ESTABLISHED~~
 24 ~~FOR THE EMPLOYEES IN GENERAL OR FOR A SPECIFIC CLASS OR~~
 25 ~~CLASSES OF EMPLOYEES, TO OR ON BEHALF OF THE EMPLOYEE FOR:~~

1 (A) retirement;

2 (B) sickness or accident disability, but in the case
3 of payments made BY AN EMPLOYER DIRECTLY to an employee or
4 dependent,--this-subsection-(17)(b)(i)(B)--includes--from--the
5 term--"wages"--only--payments--that--are--received--under--a
6 workers+compensation-law, ONLY THOSE PAYMENTS MADE UNDER A
7 WORKERS' COMPENSATION LAW ARE EXCLUDED FROM "WAGES";

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

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

19 Section 2. Section 39-51-203, MCA, is amended to read:
20 "39-51-203. Employment defined. (1) "Employment",
21 subject to other provisions of this section, means service
22 by an individual or by an officer of a corporation,
23 including service in interstate commerce, performed for
24 wages or under any contract of hire, written or oral,
25 express or implied.

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

4 (i) the service is localized in this state; or
5 (ii) the service is not localized in any state but some
6 of the service is performed in this state and:

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

10 (B) the base of operations or place from which such
11 service is directed or controlled is not in any state in
12 which some part of the service is performed, but the
13 individual's residence is in this state.

14 (b) Service is considered to be localized within a
15 state if:

16 (i) the service is performed entirely within such
17 state; or
18 (ii) the service is performed both within and without
19 such state, but the service performed without such state is
20 incidental to the individual's service within the state, for
21 example, is temporary or transitory in nature or consists of
22 isolated transactions.

23 (3) Service not covered under subsection (2) of this
24 section and performed entirely without this state with
25 respect to no part of which contributions are required and

1 paid under an unemployment insurance law of any other state
 2 or of the federal government is considered to be employment
 3 subject to this chapter if the individual performing such
 4 services is a resident of this state and the department
 5 approves the election of the employing unit for whom such
 6 services are performed that the entire service of such
 7 individual is considered to be employment subject to this
 8 chapter.

9 (4) Service performed by an individual for wages is
 10 considered to be employment subject to this chapter unless
 11 and until it is shown to the satisfaction of the department
 12 that:

13 (a) such individual has been and will continue to be
 14 free from control or direction over the performance of such
 15 services, both under his the individual's contract and in
 16 fact;

17 (b) such service is either outside the usual course of
 18 the business for which such service is performed or that
 19 such service is performed outside of all the places of
 20 business of the enterprise for which such service is
 21 performed; and

22 (c) such individual is customarily engaged in an
 23 independently established trade, occupation, profession, or
 24 business.

25 (5) The term "employment" includes service performed

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

14 (6) The term "employment" includes service performed
 15 ~~after--December--31--1971~~ by an individual in the employ of a
 16 religious, charitable, scientific, literary, or educational
 17 organization.

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

25 (i) the employer's principal place of business in the

1 United States is located in this state;
 2 (ii) the employer has no place of business in the
 3 United States, but:
 4 (A) the employer is an individual who is a resident of
 5 this state;
 6 (B) the employer is a corporation which is organized
 7 under the laws of this state; or
 8 (C) the employer is a partnership or a trust and the
 9 number of the partners or trustees who are residents of this
 10 state is greater than the number who are residents of any
 11 other state; or
 12 (iii) none of the criteria of sections (7)(a)(i) and
 13 (7)(a)(ii) of this subsection are met but the employer has
 14 elected coverage in this state or, the employer having
 15 failed to elect coverage in any state, the individual has
 16 filed a claim for benefits based on such service under the
 17 law of this state.
 18 (b) An "American employer", for purposes of this
 19 subsection, means a person who is:
 20 (i) an individual who is a resident of the United
 21 States;
 22 (ii) a partnership if two-thirds or more of the
 23 partners are residents of the United States;
 24 (iii) a trust if all of the trustees are residents of
 25 the United States; or

1 (iv) a corporation organized under the laws of the
 2 United States or of any state.
 3 (8) Agricultural labor exempted under 39-51-204 is
 4 considered employment ~~subject--to--this--chapter--effective~~
 5 ~~January-17-1978~~, whenever the employing unit pays \$20,000 or
 6 more in cash to workers for agricultural labor in any
 7 quarter in the current or preceding calendar year or employs
 8 10 or more workers in agricultural labor on 20 days in 20
 9 different weeks during the current or preceding calendar
 10 year. If an employer is otherwise subject to the chapter
 11 and has agricultural employment, all employees are covered
 12 under the chapter regardless of the amount of money
 13 expended for agricultural purposes.
 14 (9) Domestic service exempted under 39-51-204(1)(b) is
 15 considered employment ~~subject--to--this--chapter--effective~~
 16 ~~January--17--1978~~; whenever the employing unit pays \$1,000 or
 17 more in cash for domestic service in any quarter during the
 18 current or preceding calendar year. If an employer is
 19 otherwise subject to the chapter and has domestic
 20 employment, all employees are covered under the chapter
 21 regardless of the amount of money expended for domestic
 22 purposes."
 23 Section 3. Section 39-51-204, MCA, is amended to read:
 24 "39-51-204. Exclusions from definition of employment.
 25 (1) The term "employment" does not include:

1 (a) agricultural labor, except as provided in
2 39-51-203(8);

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

6 (c) service performed as an officer or member of the
7 crew of a vessel on the navigable waters of the United
8 States;

9 (d) service performed by an individual in the employ
10 of ~~his~~ that individual's son, daughter, or spouse and
11 service performed by a child under the age of 21 in the
12 employ of ~~his~~ the child's father or mother;

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

23 (f) service with respect to which unemployment
24 insurance is payable under an unemployment insurance system
25 established by an act of congress, provided that the

1 department must enter into agreements with the proper
2 agencies under such act of congress, which agreements shall
3 become effective in the manner prescribed in the Montana
4 Administrative Procedure Act for the adoption of rules, to
5 provide reciprocal treatment to individuals who have, after
6 acquiring potential rights to benefits under this chapter,
7 acquired rights to unemployment insurance under such act of
8 congress or who have, after acquiring potential rights to
9 unemployment insurance under such act of congress, acquired
10 rights to benefits under this chapter;

11 (g) services performed in the delivery and
12 distribution of newspapers or shopping news from house to
13 house and business establishments by an individual under the
14 age of 18 years, but not including the delivery or
15 distribution to any point or points for subsequent delivery
16 or distribution;

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

20 (i) service performed in the employ of a school,
21 college, or university if such service is performed by a
22 student who is enrolled and is regularly attending classes
23 at such school, college, or university or by the spouse of
24 such a student if such spouse is advised, at the time such
25 spouse commences to perform such service, that the

1 employment of such spouse to perform such service is
 2 provided under a program to provide financial assistance to
 3 such student by such school, college, or university and such
 4 employment will not be covered by any program of
 5 unemployment insurance;

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

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

20 (l) casual labor not in the course of an employer's
 21 trade or business performed in any calendar quarter, unless
 22 the cash remuneration paid for such service is \$50 or more
 23 and such service is performed by an individual who is
 24 regularly employed by such employer to perform such service.
 25 "Regularly employed" means the services are performed during

1 at least 24 days in the same quarter.

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

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

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

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

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

17 ~~(d)~~(c) in a facility conducted for the purpose of
 18 carrying out a program of rehabilitation for individuals
 19 whose earning capacity is impaired by age or physical or
 20 mental deficiency or injury or providing remunerative work
 21 for individuals who, because of their impaired physical or
 22 mental capacity, cannot be readily absorbed in the
 23 competitive labor market by an individual receiving such
 24 rehabilitation or remunerative work;

25 ~~(e)~~(d) as part of an unemployment work-relief or

1 work-training program assisted or financed in whole or in
 2 part by a federal agency or any agency of a state or
 3 political subdivision thereof by an individual receiving
 4 such work relief or work training; or

5 ~~(f)~~(e) for a state prison or other state correctional
 6 or custodial institution by an inmate of that institution."

7 Section 4. Section 39-51-407, MCA, is amended to read:

8 "39-51-407. Reimbursement of fund by state. (1) This
 9 state recognizes its obligation to replace, and hereby
 10 pledges the faith of this state that funds will be provided
 11 in the future and applied to the replacement of any of the
 12 money received ~~after July 1, 1941~~ from the United States or
 13 any agency thereof under Title III of the Social Security
 14 Act, any unencumbered balances in the unemployment insurance
 15 administration account ~~as of that date~~, any money thereafter
 16 granted to this state pursuant to the provisions of the
 17 Wagner-Peyser Act, and any money made available by the state
 18 or its political subdivisions and matched by such money
 19 granted to this state pursuant to the provisions of the
 20 Wagner-Peyser Act which the secretary of labor finds have,
 21 because of any action or contingency, been lost or have been
 22 expended for purposes other than or in amounts in excess of
 23 those found necessary by the secretary of labor for the
 24 proper administration of this chapter. Such money shall be
 25 promptly supplied by money furnished by the state of Montana

1 or any of its subdivisions for the use of the department and
 2 used only for purposes approved by the secretary of labor.
 3 The department shall, if necessary, promptly report to the
 4 governor and the governor to the legislature the amount
 5 required for such replacement.

6 ~~(2) This section shall not be construed to relieve~~
 7 ~~this state of its obligation with respect to funds received~~
 8 ~~prior to July 1, 1941, pursuant to the provisions of Title~~
 9 ~~III of the Social Security Act."~~

10 Section 5. Section 39-51-1101, MCA, is amended to
 11 read:

12 "39-51-1101. Commencement and termination of coverage
 13 under chapter. (1) Any employing unit which is or becomes an
 14 employer subject to this chapter within any calendar year
 15 shall be subject to this chapter during the whole of such
 16 calendar year, except that this subsection shall not apply
 17 to an employing unit electing coverage as provided for in
 18 39-51-1102.

19 (2) Except as otherwise provided in 39-51-1102, an
 20 employing unit shall cease to be an employer subject to this
 21 chapter only as of January 1 of any calendar year only if it
 22 files with the department prior to the last day of February
 23 of such year a written application for termination of
 24 coverage and the department finds that the total wages
 25 payable for employment by said employer in the preceding

1 calendar year did not exceed ~~\$500~~ \$1,000. For the purpose of
2 this subsection, the two or more employing units mentioned
3 in subsection (2) or (3) of 39-51-202 shall be treated as a
4 single employing unit."

5 Section 6. Section 39-51-1109, MCA, is amended to
6 read:

7 "39-51-1109. Tax appeals. Any person aggrieved by any
8 decision, determination, or redetermination of the
9 department involving contribution liability, contribution
10 rate, application for refund, or the charging of benefit
11 payments to employers making payment in lieu of
12 contributions is entitled to a review in accordance with
13 Title 2, chapter 4, parts 6 and 7. Such decision,
14 determination, or redetermination is final unless an
15 interested party entitled to notice thereof applies for a
16 review within 10 days after notification was mailed to the
17 last known address, provided that the period may be extended
18 for good cause."

19 Section 7. Section 39-51-1121, MCA, is amended to
20 read:

21 "39-51-1121. Definitions. As used in this part and
22 part 12, the following definitions apply:

23 (1) "Computation date" means the reporting period
24 ending September 30 preceding the calendar year for which a
25 covered employer's contribution rate is effective.

1 (2) "Cutoff date" means December 31 immediately
2 following the computation date. The department may extend
3 the cutoff date in meritorious cases.

4 (3) "Deficit employer" means ~~a--covered-employer an~~
5 employer who is subject under this chapter and who has
6 established a record of accumulated benefits charged to his
7 the employer's account in excess of his the employer's
8 accumulated contributions paid as of the cutoff date and has
9 a-minus-experience-factor.

10 (4) "Department" means the department of labor and
11 industry.

12 (5) "Eligible employer" means ~~a--covered--employer an~~
13 employer who is HAS BEEN subject under this chapter for the
14 3 years immediately preceding the computation date and who
15 has:

16 (a) ~~paid--contributions--during--each--of--the--3--fiscal~~
17 years--immediately--preceding--the--computation--date filed all
18 contribution reports prescribed by the department;

19 (b) ~~with--respect--to--such--3--fiscal--years,~~ filed all
20 contribution reports prescribed by the department paid all
21 contributions and assessments under 39-51-404(4), and
22 penalties and interest thereon;

23 (c) ~~paid--all--contributions--due--with--respect--to--the--3~~
24 fiscal--years--before--the--cutoff--date--of--the--rate--year
25 established a record of accumulated contributions in excess

1 of benefits charged to the employer's account; and

2 (d) ~~established--a-record-of-accumulated-contributions~~
 3 ~~in-excess-of-benefits-charged-to-his-account; and paid wages~~
 4 ~~in at least 1 of the 8 calendar quarters preceding the~~
 5 ~~computation date.~~

6 ~~(e)--achieved-a-plus-experience-factor--~~

7 (6) "Fiscal year" means the four consecutive calendar
 8 quarters ending on September 30.

9 (7) "Governmental entities" means the state or any
 10 political subdivision of the state or an instrumentality of
 11 the state or a political subdivision, including any
 12 employing unit funded directly by tax levies.

13 (8) "Unrated employer" means ~~a-covered-employer-who~~
 14 ~~has-not-paid-contributions-in-each-of--the--3--fiscal--years~~
 15 ~~immediately--preceding--the--computation-date-or-an-employer~~
 16 ~~who-has-established-a-record-of-accumulated-contributions-in~~
 17 ~~excess-of-benefits-charged-to-his-account-but-has-not--filed~~
 18 ~~all--required--payroll--reports-or-paid-contributions-by-the~~
 19 ~~cutoff-date-for-any-of-the-quarters-in-the--3--fiscal--years~~
 20 ~~immediately--preceding--the-computation-date~~ an employer who
 21 is subject under this chapter and who does not meet all the
 22 criteria of an eligible or a deficit employer."

23 Section 8. Section 39-51-1125, MCA, is amended to
 24 read:

25 "39-51-1125. Computation of payments in lieu of

1 contributions. (1) Qualified After June 30, 1987, qualified
 2 employers electing to make payments in lieu of contributions
 3 shall pay into the fund an amount equivalent to the full
 4 amount of regular benefits plus ~~one-half-of-the-amount the~~
 5 state's share of extended benefits paid to individuals based
 6 on wages paid by the employing unit. After December 31,
 7 1978, governmental entities shall pay the full amount of
 8 extended benefits.

9 (2) If benefits paid an individual are based on wages
 10 paid by both the employer and one or more other employers,
 11 the amount payable by any one employer to the fund bears the
 12 same ratio to total benefits paid to the individual as the
 13 base period wages paid to the individual by such employer
 14 bear to the total amount of base period wages paid to the
 15 individual by all his the individual's base period
 16 employers.

17 (3) If the base period wages of an individual include
 18 wages from more than one such employer, the amount to be
 19 paid into the fund with respect to the benefits paid to the
 20 individual shall be prorated among the liable employers in
 21 proportion to the wages paid to the individual by each such
 22 employer during the base period.

23 (4) The amount of payment required from employers
 24 shall be ascertained by the department monthly and becomes
 25 due and payable by the employer quarterly as directed in

1 this chapter. Penalty and interest for delinquency shall be
2 assessed such employers as specified in 39-51-1301.

3 ~~{5}--A--nonprofit--organization--which--elects--to--make
4 payments--in--lieu--of--contributions--into--the--unemployment
5 insurance--fund--is--not--liable--to--make--such--payments--with
6 respect--to--the--benefits--paid--to--any--individual--whose--base
7 period---wages---include---wages--for--previously--uncovered
8 services,--as--defined--in--39-51-204{3}{c},--to--the--extent--that
9 the--unemployment--insurance--fund--is--reimbursed--for--such
10 benefits--pursuant--to--section--121--of--Public--Law--94-566:"~~

11 Section 9. Section 39-51-1213, MCA, is amended to
12 read:

13 "39-51-1213. Classification of employers for
14 experience rating purposes. (1) The department shall for
15 each calendar year classify employers in accordance with
16 their actual experience in the payment of contributions and
17 with respect to benefits charged against their accounts,
18 with contribution rates reflecting benefit experience. Each
19 employer's rate for a calendar year shall be determined on
20 the basis of his the employer's record as of October 1 of
21 the preceding calendar year.

22 (2) In making the classification, each eligible and
23 deficit employer's contribution rate is determined in the
24 manner set forth below:

25 (a) Each employer is given an "experience factor"

1 which is contributions paid since October 1, 1981, minus
2 benefits charged on each employer's account since October 1,
3 1981, divided by his the employer's average annual taxable
4 payroll rounded to the next lower dollar amount for the 3
5 fiscal years immediately preceding the computation date. The
6 computation of the "experience factor" shall be to six
7 decimal places.

8 (b) Schedules shall be prepared listing all eligible
9 and deficit employers in inverse numerical order of their
10 experience factors. There shall be listed on such schedules
11 for each employer in addition to the experience factor:

12 (i) the amount of his the employer's taxable payroll
13 for the fiscal year ending on the computation date; and

14 (ii) the cumulative total consisting of the sum of the
15 employer's taxable payroll for the fiscal year ending on the
16 computation date and the corresponding taxable payrolls for
17 all other employers preceding him that employer on the
18 schedules.

19 (3) The cumulative taxable payroll amounts listed on
20 the schedules provided for in 39-51-1218 shall be segregated
21 into groups that will yield approximately the average tax
22 rate according to the tax schedule assigned for that
23 particular taxable year. Each group shall be identified by
24 the rate class number listed in the table which represents
25 the percentage limits of each group. Each employer on the

1 schedules is assigned that contribution rate opposite ~~his~~
 2 that employer's rate class for the tax schedule in effect
 3 for the taxable year.

4 (4) (a) If the grouping of rate classes requires the
 5 inclusion of exactly one-half of an employer's taxable
 6 payroll, the employer is assigned the lower of the two rates
 7 designated for the two classes in which the halves of ~~his~~
 8 that employer's taxable payroll are so required.

9 (b) If the group of rate classes requires the
 10 inclusion of a portion other than exactly one-half of an
 11 employer's taxable payroll, the employer is assigned the
 12 rate designated for the class in which the greater part of
 13 ~~his~~ that employer's taxable payroll is so required.

14 (c) If one or more employers on the schedules have
 15 experience factors identical to that of the last employer
 16 included in a particular rate class, all such employers are
 17 included in and assigned the contribution rate specified for
 18 such class, notwithstanding the provisions of 39-51-1214.

19 (5) If the taxable payroll amount or the experience
 20 factor or both such taxable payroll amount and experience
 21 factor of any eligible or deficit employer listed on the
 22 schedules is changed, the employer is placed in that
 23 position on the schedules which ~~he~~ the employer would have
 24 occupied had ~~his~~ that employer's taxable payroll amount or
 25 experience factor as changed been used in determining ~~his~~

1 that employer's position in the first instance, but such
 2 change does not affect the position or rate classification
 3 of any other employer listed on the schedules and does not
 4 affect the rate determination for previous years.

5 (6) Deficit employers who have not filed all required
 6 payroll reports or paid all contributions due by the cutoff
 7 date must be assigned the maximum contribution rate in
 8 effect for the taxable year."

9 Section 10. Section 39-51-1219, MCA, is amended to
 10 read:

11 "39-51-1219. Procedures for the substitution, merger,
 12 or acquisition of an employer account by a successor
 13 employing unit. (1) Subject to the provisions of subsection
 14 (3), whenever any individual or organization (whether or not
 15 a covered employer) in any manner succeeds to or acquires
 16 all or substantially all of the business of an employer who
 17 at the time of acquisition was a covered employer and
 18 whenever in respect to whom the department finds that the
 19 business of the predecessor is continued solely by the
 20 successor:

21 (a) the separate account and the actual contribution,
 22 benefit, and taxable payroll experience of the predecessor
 23 shall, upon the joint application of the predecessor and the
 24 successor within 90 days after such acquisition and approval
 25 by the department, be transferred to the successor employer

1 for the purpose of determining the successor's liability and
 2 rate of contribution; and

3 (b) any successor who was not an employer on the date
 4 of acquisition becomes a covered employer as of such date.

5 (2) Whenever any individual or organization (whether
 6 or not a covered employer) in any manner succeeds to or
 7 acquires part of the business of an employer who at the time
 8 of acquisition was a covered employer and whenever such
 9 portion of the business is continued by the successor:

10 (a) so much of the separate account and the actual
 11 contribution, benefit, and taxable payroll experience of the
 12 predecessor as is attributable to the portion of the
 13 business transferred, as determined on a pro rata basis in
 14 the same ratio that the wages of covered employees properly
 15 allocable to the transferred portion of the business bears
 16 to the payroll of the predecessor in the last four completed
 17 calendar quarters immediately preceding the date of
 18 transfer, shall, upon the joint application of the
 19 predecessor and the successor within 90 days after such
 20 acquisition and approval by the department, be transferred
 21 to the successor employer for the purpose of determining the
 22 successor's liability and rate of contribution; and

23 (b) any successor who was not an employer on the date
 24 of acquisition becomes a covered employer as of such date.

25 (3) (a) The 90-day period may be extended at the

1 discretion of the department.

2 (b) Whenever a predecessor covered employer has a
 3 deficit experience rating account as of the last computation
 4 date, the transfer provided for in subsections (1) and (2)
 5 is mandatory except when it is shown by substantial evidence
 6 that neither the management, or ownership, or nor both the
 7 management and ownership are not substantially the same for
 8 the successor as for the predecessor, in which case the
 9 successor shall begin with the rate of a new employer.
 10 Whenever such mandatory transfer involves only a portion of
 11 the experience rating record and the predecessor or
 12 successor employers fail to supply the required payroll
 13 information within 10 days after notice, the transfer shall
 14 be based on estimates of the applicable payrolls.

15 (4) (a) If the successor was a covered employer prior
 16 to the date of the acquisition of all or a part of the
 17 predecessor's business, ~~his~~ the successor's rate of
 18 contribution, effective the first day of the calendar year
 19 immediately following the date of acquisition, is based on
 20 the combined experience of the predecessor and successor.

21 (b) If the successor was not a covered employer prior
 22 to the date of the acquisition of all or a part of the
 23 predecessor's business, ~~his~~ the successor's rate is the rate
 24 applicable to the predecessor with respect to the period
 25 immediately preceding the date of acquisition, but if there

1 was more than one predecessor, the successor's rate shall be
 2 a newly computed rate based on the combined experience of
 3 the predecessors, becoming effective immediately after the
 4 date of acquisition and remaining in effect for the balance
 5 of the rate year."

6 Section 11. Section 39-51-1301, MCA, is amended to
 7 read:

8 "39-51-1301. (Temporary) Penalty and interest on
 9 past-due contributions. (1) Contributions unpaid on the date
 10 on which they are due and payable, as provided by
 11 subsections (1) and (2) of 39-51-1103 and 39-51-1125, that
 12 are paid within--20--days--after by the end of the month
 13 following the due date shall be subject to a penalty
 14 assessment of \$10 or 10% of the contribution due, whichever
 15 is greater. If the contributions are not paid within--20
 16 days--after by the end of the month following the due date,
 17 the employer shall be subject to a penalty assessment of \$15
 18 or 15% of the contributions due, whichever is greater. All
 19 past-due contributions shall bear interest at the rate of
 20 18% a year, to be prorated on a daily basis.

21 (2) A penalty of \$40 shall be assessed whenever, as
 22 the result of a willful refusal of an employer to furnish
 23 wage information or pay contributions on time, the
 24 department issues a subpoena to obtain wage information or
 25 makes a summary or jeopardy assessment pursuant to

1 39-51-1302.

2 (3) There is an account in the federal special revenue
 3 fund. Penalties and interest collected under this section
 4 must be deposited in that account. Money deposited in that
 5 account and appropriated to the department must be used by
 6 the department to administer this chapter and for programs
 7 to train and retrain unemployed and underemployed persons.
 8 Money in the account not appropriated for these purposes
 9 must be transferred by the department to the unemployment
 10 insurance trust fund at the end of each fiscal year.

11 (4) When failure to pay contributions on time was not
 12 caused by willful intent of the employer, the department may
 13 abate the penalty and interest.

14 (5) All money accruing to the unemployment insurance
 15 trust fund from interest and penalties collected on past-due
 16 contributions must be used solely for the payment of
 17 unemployment insurance benefits and may not be used for any
 18 other purpose.

19 39-51-1301. (Effective July 1, 1989) Penalty and
 20 interest on past-due contributions. (1) Contributions unpaid
 21 on the date on which they are due and payable, as provided
 22 by subsections (1) and (2) of 39-51-1103 and 39-51-1125,
 23 that are paid within-20-days-after by the end of the month
 24 following the due date shall be subject to a penalty
 25 assessment of \$10 or 10% of the contribution due, whichever

1 is greater. If the contributions are not paid ~~within--20~~
 2 ~~days--after~~ by the end of the month following the due date,
 3 the employer shall be subject to a penalty assessment of \$15
 4 or 15% of the contributions due, whichever is greater. All
 5 past-due contributions shall bear interest at the rate of
 6 18% a year, to be prorated on a daily basis.

7 (2) A penalty of \$40 shall be assessed whenever, as
 8 the result of a willful refusal of an employer to furnish
 9 wage information or pay contributions on time, the
 10 department issues a subpoena to obtain wage information or
 11 makes a summary or jeopardy assessment pursuant to
 12 39-51-1302.

13 (3) Interest and penalties collected pursuant to this
 14 section shall be paid into the unemployment insurance trust
 15 fund.

16 (4) When failure to pay contributions on time was not
 17 caused by willful intent of the employer, the department may
 18 abate the penalty and interest.

19 (5) All money accruing to the unemployment insurance
 20 trust fund from interest and penalties collected on past-due
 21 contributions must be used solely for the payment of
 22 unemployment insurance benefits and may not be used for any
 23 other purpose."

24 Section 12. Section 39-51-1303, MCA, is amended to
 25 read:

1 "39-51-1303. Collection of unpaid contributions by
 2 civil action. (1) If, after due notice, any employer
 3 defaults in any payment of contributions or interest
 4 thereon, the department may ~~in~~ at its discretion initiate a
 5 civil action in the name of the Montana department of labor
 6 and industry to collect the amount due, and the employer
 7 adjudged in default shall pay the costs of such action. ~~The~~
 8 ~~venue--for--such--action--may,--in--the--discretion--of--the~~
 9 ~~department,--be--in--Brewer--and--Clark--County;~~

10 (2) An action for the collection of contributions due
 11 must be brought within 5 years after the due date of such
 12 contributions or it is barred.

13 (3) The department may pursue its remedy under either
 14 this section or 39-51-1304, or both."

15 Section 13. Section 39-51-1304, MCA, is amended to
 16 read:

17 "39-51-1304. Lien for payment of unpaid contributions
 18 and assessments -- levy and execution. Unpaid contributions
 19 and assessments under 39-51-404(4), including penalties and
 20 interest assessed thereon, have the effect of a judgment
 21 against the employer, arising at the time ~~the--contributions~~
 22 such payments are due. The department may issue a
 23 certificate of lien setting forth the amount of
 24 ~~contributions--due--and--accrued--interest~~ payments due and
 25 directing the clerk of the district court of any county of

1 the state to enter the certificate as a judgment in the
 2 docket pursuant to 25-9-301. From the time the judgment is
 3 docketed, it becomes a lien upon all real and personal
 4 property of the employer. FROM THE TIME THE JUDGMENT IS
 5 FILED WITH THE SECRETARY OF STATE OR A REGISTRAR OF PERSONAL
 6 PROPERTY SPECIFICALLY DESCRIBING THE PERSONAL PROPERTY, IT
 7 BECOMES A LIEN UPON PERSONAL PROPERTY OF THE EMPLOYER. After
 8 the due process requirements of 39-51-1109 and 39-51-2403
 9 have been satisfied, the department may enforce the judgment
 10 pursuant to Title 25, chapter 13, except that the department
 11 may enforce the judgment at any time within 10 years of the
 12 creation of the lien."

13 Section 14. Section 39-51-2101, MCA, is amended to
 14 read:

15 "39-51-2101. Total unemployment -- when. An individual
 16 shall be deemed totally unemployed in any week during which
 17 he the individual performed no work and earned no wages or a
 18 week of less than full-time work with wages of less than 2
 19 times his the individual's weekly benefit amount. No
 20 individual is unemployed in any week that he is
 21 self-employed."

22 Section 15. Section 39-51-2105, MCA, is amended to
 23 read:

24 "39-51-2105. Qualifying wages. (i) To qualify as an
 25 insured worker an individual must have been paid wages for

1 insured work in the quarters of his base period an amount
 2 totating not less than 1 1/2 times his base period high
 3 quarter wages.

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

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

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

17 (b) which:
 18 (i) are agricultural labor, as defined in
 19 39-51-203(8), or domestic service, as defined in
 20 39-51-203(9); or

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

1 assistance---under---Title---II---of---the---Emergency---Jobs---and
2 Unemployment-Assistance-Act-of-1974-was-paid-on-the-basis-of
3 such-services;"

4 Section 16. Section 39-51-2303, MCA, is amended to
5 read:

6 "39-51-2303. Disqualification for discharge due to
7 misconduct. An individual shall be disqualified for benefits
8 if-he-has-been after being discharged:

9 (1) for misconduct connected with his the individual's
10 work or affecting his the individual's employment until an
11 the individual has performed services, other than
12 self-employment, for which remuneration is received equal to
13 or in excess of eight times his the individual's weekly
14 benefit amount subsequent to the week in which the act
15 causing the disqualification occurred.

16 (2) for gross misconduct connected with his the
17 individual's work or committed on the employer's premises,
18 as determined by the department, for a period of ~~12--months~~
19 52 weeks."

20 Section 17. Section 39-51-2304, MCA, is amended to
21 read:

22 "39-51-2304. Disqualification for failure to apply for
23 or to accept suitable work. (1) ~~Effective-April-17-1977--an~~
24 An individual is disqualified for benefits if he the
25 individual fails without good cause either to apply for

1 available and suitable work when so directed by the
2 employment office or the department or to accept an offer of
3 suitable work ~~offered-to-him~~ which he the individual is
4 physically able and mentally qualified to perform or to
5 return to his customary self-employment, if any, when so
6 directed by the department. Such disqualification continues
7 for the week in which such failure occurs and until the
8 individual has performed services, other than
9 self-employment, for which remuneration is received equal to
10 or in excess of his six times that individual's weekly
11 benefit amount ~~in--6-separate-weeks~~ subsequent to the date
12 the act causing the disqualification occurred, with 6 weeks'
13 reduction in benefit duration, as determined by the
14 department, provided he the individual has not left this
15 work under disqualifying circumstances.

16 (2) In determining whether or not any work is suitable
17 for an individual, the department shall consider:

18 (A) the degree of risk involved to his the
19 individual's health, safety, and morals; his

20 (B) the individual's physical fitness and prior
21 training; his

22 (C) THE INDIVIDUAL'S experience and previous
23 earnings; his

24 (D) THE INDIVIDUAL'S length of unemployment and
25 prospects for securing local work in his the customary

1 occupation, and
 2 (E) the distance of the available work from ~~his~~ the
 3 individual's residence.
 4 (3) Notwithstanding any other provisions of this
 5 chapter, including subsection (4), no work may be considered
 6 suitable and benefits may not be denied under this chapter
 7 to any otherwise eligible individual for refusing to accept
 8 new work under any of the following conditions:
 9 (a) if the position offered is vacant due directly to
 10 a strike, lockout, or other labor dispute;
 11 (b) if the wages, hours, or other conditions of the
 12 work offered are substantially less favorable to the
 13 individual than those prevailing for similar work in the
 14 locality;
 15 (c) if, as a condition of being employed, the
 16 individual would be required to join a company union or to
 17 resign from or refrain from joining any bona fide labor
 18 organization.
 19 (4) Subject to subsection (3), after 13 weeks of
 20 unemployment, suitable work is work that meets the criteria
 21 in this section and that offers 75% of the individual's
 22 earnings in ~~his~~ previous insured work in ~~his~~ the
 23 individual's customary occupation. No individual, however,
 24 is required to accept a job paying less than the federal
 25 minimum wage."

1 Section 18. Section 39-51-2402, MCA, is amended to
 2 read:
 3 "39-51-2402. Initial determination -- redetermination.
 4 (1) A representative designated by the department and
 5 hereinafter referred to as a deputy shall promptly examine
 6 the claim and, on the basis of the facts found by ~~him~~ the
 7 deputy, shall either determine whether or not such claim is
 8 valid and, if valid, the week with respect to which benefits
 9 shall commence, the weekly benefit amount payable, and the
 10 maximum duration thereof or shall refer such claim or any
 11 question involved therein to an appeals referee who shall
 12 make ~~his~~ the decision with respect thereto in accordance
 13 with the procedure prescribed in 39-51-2403. The deputy
 14 shall promptly notify the claimant and any other interested
 15 party of the decision and the reasons therefor.
 16 (2) The deputy may for good cause reconsider ~~his~~ the
 17 decision and shall promptly notify the claimant and such
 18 other interested parties of ~~his~~ the amended decision and the
 19 reasons therefor.
 20 (3) No determination or redetermination of an initial
 21 or additional claim shall be made under this section unless
 22 5 days' notice of the time and place of the claimant's
 23 interview for examination of the claim is mailed to each
 24 interested party.
 25 (4) A determination or redetermination shall be deemed

1 final unless an interested party entitled to notice thereof
 2 applies for reconsideration of the determination or appeals
 3 therefrom within ~~5 days after delivery of such notification~~
 4 ~~or within 7~~ 10 days after such notification was mailed to
 5 ~~his~~ the interested party's last known address, provided that
 6 such period may be extended for good cause."

7 Section 19. Section 39-51-2403, MCA, is amended to
 8 read:

9 "39-51-2403. Decision of appeals referee. After a
 10 hearing, an appeals referee shall make findings and
 11 conclusions promptly and on the basis thereof affirm,
 12 modify, or reverse the deputy's determination or
 13 redetermination. Each interested party shall be furnished
 14 promptly a copy of the decision and the supporting findings
 15 and conclusions. This decision shall be final unless
 16 further review is initiated pursuant to 39-51-2404 within 5
 17 ~~days after delivery of such notification or within 7~~ 10 days
 18 after such notification was mailed to his the interested
 19 party's last known address, provided that such period may be
 20 extended for good cause."

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

23 "39-51-2410. Finality of board's decision -- judicial
 24 review. (1) Any decision of the board in the absence of an
 25 appeal therefrom as herein provided shall become final 30

1 days after the date of notification or mailing thereof,
 2 ~~except in the case of the department when such decision~~
 3 ~~becomes final 20 days following the board's decision,~~ and
 4 judicial review thereof shall be permitted only after any
 5 party claiming to be aggrieved thereby has exhausted his all
 6 remedies before the board. ~~The department shall be deemed~~
 7 ~~to be a party to any judicial action involving any such~~
 8 ~~decision and may be represented in any such action by an~~
 9 ~~attorney employed by the department or at the department's~~
 10 ~~request, by the attorney general.~~ THE DEPARTMENT IS DEEMED
 11 TO BE A PARTY TO ANY JUDICIAL ACTION INVOLVING ANY SUCH
 12 DECISION AND MAY BE REPRESENTED IN ANY SUCH ACTION BY AN
 13 ATTORNEY EMPLOYED BY THE DEPARTMENT OR, AT THE DEPARTMENT'S
 14 REQUEST, BY THE ATTORNEY GENERAL.

15 (2) Within 30 days after the date of notification or
 16 mailing of the decision of the board, any party aggrieved
 17 thereby may secure judicial review thereof by commencing an
 18 action in the district court of the county in which said
 19 party resides and in which action any other party to the
 20 proceeding before the board shall be made a defendant. In
 21 such action a petition, which need not be verified but which
 22 shall state the grounds upon which a review is sought, shall
 23 be served upon the commissioner of labor and industry and
 24 all other interested parties in the manner provided in the
 25 Montana Rules of Civil Procedure.

1 (3) ~~With--its-answer,--the~~ The department shall certify
 2 and file with said court all documents and papers and a
 3 transcript record of all testimony taken in the matter,
 4 together with the board's findings of fact and decision.
 5 The board may also in its discretion certify to such court
 6 questions 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~~ EXCEPT CASES ARISING UNDER THE WORKERS'
 20 COMPENSATION LAW OF THIS STATE.

21 (6) An appeal may be taken from the decision of the
 22 district court to the supreme court of Montana in the same
 23 manner, but not inconsistent with the provisions of this
 24 chapter, as is provided in civil cases. It shall not be
 25 necessary in any judicial proceeding under this section to

1 enter exceptions to the rulings of the board and no bond
 2 shall be required for entering such appeal. Upon the final
 3 determination of such judicial proceeding, the department
 4 shall enter an order in accordance with such determination."

5 Section 21. Section 39-51-2501, MCA, is amended to
 6 read:

7 "39-51-2501. Definitions. As used in this part, unless
 8 the context clearly requires otherwise, the following
 9 definitions apply:

10 (1) "Extended benefit period" means a period which:
 11 (a) begins with the third week after a week for which
 12 there is a state "on" indicator, provided that no extended
 13 benefit period may begin by reason of a state "on" indicator
 14 before the 14th week following the end of a prior extended
 15 benefit period which was in effect with respect to this
 16 state; and

17 (b) ends with the third week after the first week for
 18 which there is a state "off" indicator or the 13th
 19 consecutive week of such period.

20 (2) (a) "Rate of insured unemployment", for purposes
 21 of 39-51-2504 and 39-51-2505, means the percentage derived
 22 by dividing the average weekly number of individuals filing
 23 claims for regular benefits in this state for weeks of
 24 unemployment with respect to the most recent
 25 13-consecutive-week period, as determined by the department

1 on the basis of its reports to the U.S. secretary of labor,
2 by the average monthly employment covered under this chapter
3 for the first 4 of the most recent 6 completed calendar
4 quarters ending before the end of such 13-week period.

5 (b) Computations required by the provisions of
6 subsection (2)(a) shall be made by the department in
7 accordance with regulations prescribed by the U.S. secretary
8 of labor.

9 (3) "Regular benefits" means benefits payable to an
10 individual under this chapter or under any other state law,
11 including benefits payable to federal civilian employees and
12 to ~~ex-servicemen~~ ex-service personnel pursuant to 5 U.S.C.
13 chapter 85, other than extended benefits.

14 (4) "Extended benefits" means benefits, including
15 benefits payable to federal civilian employees and to
16 ~~ex-servicemen~~ ex-service personnel pursuant to 5 U.S.C.
17 chapter 85, payable to an individual under the provisions of
18 this part for weeks of unemployment in his the individual's
19 eligibility period.

20 (5) "Eligibility period", ~~of an individual relating to~~
21 extended benefits, means the period consisting of the weeks
22 in his the individual's benefit year which begin in an
23 extended benefit period and, if his the individual's benefit
24 year ends within such extended benefit period, any weeks
25 thereafter which begin in such period.

1 (6) "Exhaustee" means an individual who, with respect
2 to any week of unemployment in his the eligibility period:

3 (a) has received, prior to such week, all of the
4 regular benefits that were available ~~to--him~~ under this
5 chapter or any other state law, including dependents'
6 allowances and benefits payable to federal civilian
7 employees and ~~ex-servicemen~~ ex-service personnel under 5
8 U.S.C. chapter 85, in his the current benefit year that
9 includes such week; provided that, for the purposes of this
10 subsection, an individual shall be deemed to have received
11 all of the regular benefits that were available ~~to-him~~
12 although, as a result of a pending appeal with respect to
13 wages that were not considered in the original monetary
14 determination ~~in-his~~ of the benefit year, he the individual
15 may subsequently be determined to be entitled to added
16 regular benefits;

17 (b) his the benefit year having expired prior to such
18 week, has no or insufficient wages on the basis of which he
19 the individual could establish a new benefit year that would
20 include such week;

21 (c) has no right to unemployment benefits or
22 allowances, as the case may be, under the Railroad
23 Unemployment Insurance Act, ~~the Trade-Expansion-Act-of-1962,~~
24 ~~the Automotive-Products-Trade-Act-of-1965,~~ and such other
25 federal laws as are specified in regulations issued by the

1 U.S. secretary of labor; and

2 (d) has not received and is not seeking unemployment
3 benefits under the unemployment compensation law of Canada,
4 but if he the individual is seeking such benefits and the
5 appropriate agency finally determines that he the individual
6 is not entitled to benefits under such law, he the
7 individual is considered an exhaustee.

8 (7) "State law" means the unemployment insurance law
9 of any state approved by the U.S. secretary of labor under
10 section 3304 of the Internal Revenue Code of 1954."

11 Section 22. Section 39-51-3105, MCA, is amended to
12 read:

13 "39-51-3105. Assignment, pledge, or encumbrance of
14 right to benefits void -- benefits exempt from levy,
15 execution, attachment, or other remedy for collection of
16 debt -- exception. Any assignment, pledge, or encumbrance of
17 any right to benefits which are or may become due or payable
18 under this chapter shall be void, and such rights to
19 benefits shall be exempt from levy, execution, attachment,
20 or any other remedy whatsoever provided for the collection
21 of debt, and benefits received by any individual, so long as
22 they are not mingled with other funds of the recipient,
23 shall be exempt from any remedy whatsoever for the
24 collection of all debts except ~~debts--incurred--for~~
25 ~~necessaries-furnished-to-such-individual-or--his--spouse--or~~

1 dependents---during---the--time--when--such--individual--was
2 unemployed as provided in 39-51-3106. Any waiver of any
3 exemption provided for in this section shall be void."

4 Section 23. Section 39-51-3202, MCA, is amended to
5 read:

6 "39-51-3202. Making false statement or representation
7 or failing to disclose material fact in order to obtain or
8 increase benefits -- criminal penalty. (1) A person who, in
9 order to obtain or increase for himself personal gain or for
10 any other person benefits under this chapter or under an
11 employment security law of any other state or territory or
12 the federal government, knowingly makes a false statement or
13 representation or knowingly fails to disclose a material
14 fact is guilty of a crime under 45-7-203, and the department
15 may cause criminal proceedings to be initiated against him
16 the person.

17 (2) A person will be required to repay to the
18 department an amount as determined by 39-51-3201(2).

19 (3) For purposes of this section, restitution awarded
20 under this section must include a sum equal to the amount
21 wrongfully received plus 18% interest a year notwithstanding
22 the provisions of 25-9-205."

23 Section 24. Section 39-51-3206, MCA, is amended to
24 read:

25 "39-51-3206. ~~Liability---for---wrongful---or---improper~~

1 ~~receipt of benefits~~ Collection of benefit overpayments. Any
 2 ~~person who, by reason of the nondisclosure or~~
 3 ~~misrepresentation by him or by another of a material fact,~~
 4 ~~irrespective of whether such nondisclosure or~~
 5 ~~misrepresentation was known or fraudulent, has received any~~
 6 ~~sum as benefits under this chapter while any conditions for~~
 7 ~~the receipt of benefits imposed by this chapter were not~~
 8 ~~fulfilled in his case or while he was disqualified from~~
 9 ~~receiving benefits shall, in the discretion of the~~
 10 ~~department, either be liable to have such sum deducted from~~
 11 ~~any future benefits payable to him under this chapter or~~
 12 ~~shall be liable to repay to the department for the~~
 13 ~~unemployment insurance fund a sum equal to the amount so~~
 14 ~~received by him, and such sum shall be collectible in the~~
 15 ~~manner provided in this chapter for the collection of past~~
 16 ~~due contributions. An action for collection of overpaid~~
 17 ~~benefits must be brought within 5 years after the date of~~
 18 ~~such overpayment or it is barred. A person who receives~~
 19 benefits not authorized by this chapter shall repay to the
 20 department either directly or, as authorized by the
 21 department, by offset of future benefits to which the
 22 claimant may be entitled, or by a combination of both
 23 methods, a sum equal to the amount of the overpayment. The
 24 sum is collectible in the manner provided in this chapter
 25 for the collection of past due contributions unless the

1 department finds that the benefits were received through no
 2 fault of the person and the recovery of the benefits would
 3 be against equity and good conscience. An action for
 4 collection of overpaid benefits must be brought within 5
 5 years after the date of the overpayment. Notwithstanding any
 6 other provision of this chapter, the department may recover
 7 an overpayment of benefits paid to any individual under this
 8 state or another state law or under an unemployment benefit
 9 program of the United States."

10 NEW SECTION. Section 25. Authority to determine
 11 uncollectibility of debts -- transfer of debts for
 12 collection -- liability for payment of fees and costs of
 13 collection. (1) After making all reasonable efforts to
 14 collect unpaid contribution CONTRIBUTIONS, assessments under
 15 39-51-404(4), and penalties and interest thereon, or
 16 overpaid benefits under 39-51-3206 and interest thereon, the
 17 department may determine a debt to be uncollectible. Upon
 18 determining that a debt is uncollectible, the department may
 19 transfer the debt to the department of revenue for
 20 collection as provided in 17-4-104.

21 (2) Subject to approval by the department, reasonable
 22 fees or costs of collection incurred by the department of
 23 revenue may be added to the amount of the debt, including
 24 added fees or costs. The debtor is liable for repayment of
 25 the amount of the debt, plus fees or costs added pursuant to

1 this subsection. All money collected must be returned to the
 2 department to be applied to the debt, except that all fees
 3 or costs collected must be retained by the department of
 4 revenue. If less than the full amount of the debt is
 5 collected, the department of revenue shall retain only a
 6 proportionate share of the collection fees or costs.

7 Section 26. Section 18-4-241, MCA, is amended to read:

8 "18-4-241. Authority to remove or suspend from
 9 vendors' list. (1) The department may remove a person for
 10 cause from consideration for award of contracts. The removal
 11 may not be for a period of more than 3 years.

12 (2) The department may suspend a person from
 13 consideration for award of contracts if there is probable
 14 cause to believe that the person has engaged in activities
 15 that may lead to removal. The suspension may not be for a
 16 period exceeding 3 months unless an indictment has been
 17 issued for an offense that would be a cause for removal
 18 under subsection (3), in which case the suspension must, at
 19 the request of the attorney general, remain in effect until
 20 after the trial of the suspended person. The authority to
 21 remove or suspend must be exercised in accordance with rules
 22 adopted by the department.

23 (3) The causes for removal or suspension include the
 24 following:

25 (a) violation of contract provisions, as set forth in

1 (i) and (ii) of this subsection, of a character which is
 2 regarded by the department to be so serious as to justify
 3 removal action:

4 (i) deliberate failure without good cause to perform
 5 in accordance with the specifications or within the time
 6 limit provided in the contract; or

7 (ii) a recent record of failure to perform or of
 8 unsatisfactory performance in accordance with the terms of
 9 one or more contracts, provided that failure to perform or
 10 unsatisfactory performance caused by acts beyond the control
 11 of the contractor may not be considered to be a basis for
 12 removal;

13 (b) failure to respond to a number of solicitations
 14 over a period of time as determined by the department in
 15 accordance with rules, and after adequate written notice to
 16 the affected person of the intent to remove or suspend; and

17 (c) any other cause the department determines to be so
 18 serious and compelling as to affect responsibility as a
 19 state contractor, including removal by another governmental
 20 entity for any cause listed in the department's rules; and

21 (d) failure to comply with the provisions of Title 39,
 22 chapter 51, or Title 39, chapter 71.

23 (4) The department shall issue a written decision to
 24 remove or suspend, stating the reasons for the action taken.

25 A copy of the decision must be mailed or otherwise furnished

1 immediately to the person involved."

2 NEW SECTION. Section 27. Extension of authority. Any
3 existing authority of the department of labor and industry
4 to make rules on the subject of the provisions of this act
5 is extended to the provisions of this act.

6 NEW SECTION. Section 28. Repealer. Section
7 39-51-2206, MCA, is repealed.

8 NEW SECTION. Section 29. Codification instruction.
9 Section 25 is intended to be codified as an integral part of
10 Title 39, chapter 51, part 32, and the provisions of Title
11 39, chapter 51, apply to section 25.

12 NEW SECTION. Section 30. Effective date. This act is
13 effective on ~~passage and approval~~ JULY 1, 1987.

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

1 House BILL NO. 238
2 INTRODUCED BY Bradley
3 BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAW RELATING TO DISASTER AND EMERGENCY SERVICES;
7 AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-311, AND
8 10-3-401, MCA."
9

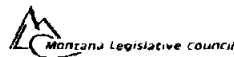
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 10-3-101, MCA, is amended to read:

12 "10-3-101. Declaration of policy. Because of the
13 existing and increasing possibility of the occurrence of
14 disasters or emergencies of unprecedented size and
15 destructiveness resulting from enemy attack, sabotage, or
16 other hostile action and natural disasters and in order to
17 provide for prompt and timely reaction to an emergency or
18 disaster, to insure that preparation of this state will be
19 adequate to deal with such disasters or emergencies, and
20 generally to provide for the common defense and to protect
21 the public peace, health, and safety and to preserve the
22 lives and property of the people of this state, it is hereby
23 found and declared to be necessary to:

24 (1) authorize the creation of local or
25 interjurisdictional organizations for disaster and emergency

1 services in the political subdivisions of this state;
2 (2) reduce vulnerability of people and communities of
3 this state to damage, injury, and loss of life and property
4 resulting from natural or man-made disasters;
5 ~~{3}--prepare--for--prompt--and--efficient--search--rescue--~~
6 ~~recovery--care--and--treatment--of--persons--lost--entrapped--~~
7 ~~victimized--or--threatened--by--emergencies--or--disasters;~~
8 ~~{4}{3}~~ provide a setting conducive to the rapid and
9 orderly start of restoration and rehabilitation of persons
10 and property affected by disasters;
11 ~~{5}{4}~~ clarify and strengthen the roles of the
12 governor, state agencies, and local governments in
13 prevention of, preparation for, response to, and recovery
14 from emergencies and disasters;
15 ~~{6}{5}~~ authorize and provide for cooperation in
16 disaster prevention, preparedness, response, and recovery;
17 ~~{7}{6}~~ authorize and provide for coordination of
18 activities relating to disaster prevention, preparedness,
19 response, and recovery by agencies and officers of this
20 state and similar state-local, interstate, federal-state,
21 and foreign activities in which the state and its political
22 subdivisions may participate;
23 ~~{8}{7}~~ provide an emergency and disaster management
24 system embodying all aspects of emergency or disaster
25 prevention, preparedness, response, and recovery;



1 ~~(9)~~(8) assist in prevention of disasters caused or
2 aggravated by inadequate planning for public and private
3 facilities and land use; and

4 ~~(10)~~(9) supplement, without in any way limiting,
5 authority conferred by previous statutes of this state and
6 increase the capability of the state, local, and
7 interjurisdictional disaster and emergency services agencies
8 to perform disaster and emergency services."

9 Section 2. Section 10-3-103, MCA, is amended to read:

10 "10-3-103. Definitions. As used in parts 1 through 4
11 of this chapter, the following definitions apply:

12 (1) "Civil defense" means the nuclear preparedness
13 functions and responsibilities of disaster and emergency
14 services.

15 (2) "Department" means the department of military
16 affairs.

17 (3) "Disaster" means the occurrence or imminent threat
18 of widespread or severe damage, injury, or loss of life or
19 property resulting from any natural or man-made cause,
20 including tornadoes, windstorms, snowstorms, wind-driven
21 water, high water, floods, wave action, earthquakes,
22 landslides, mudslides, volcanic action, fires, explosions,
23 or air or water contamination requiring emergency action to
24 avert danger or damage, blight, droughts, infestations,
25 riots, sabotage, hostile military or paramilitary action,

1 disruption of state services, or accidents involving
2 radiation byproducts or other hazardous materials.

3 (4) "Disaster and emergency services" means the
4 ~~prevention--of--the~~ preparation for, and the carrying out of
5 disaster and emergency functions and responsibilities, other
6 than those for which military forces or other state or
7 federal agencies are primarily responsible, to ~~prevent~~
8 mitigate, prepare for, respond to, and recover from injury
9 and damage resulting from emergencies or disasters.

10 (5) "Division" means the division of disaster and
11 emergency services of the department of military affairs.

12 (6) "Emergency" means the imminent threat of a
13 disaster causing immediate peril to life or property which
14 timely action can avert or minimize.

15 (7) "Political subdivision" means any county, city,
16 town, or other legally constituted unit of local government
17 in this state.

18 (8) "Principal executive officer" means the mayor,
19 chairman of the county commissioners, or other chief
20 executive officer of a political subdivision.

21 ~~(9) "Search--and--rescue" means the employment,~~
22 ~~coordination,--and--utilization--of--available--resources--and~~
23 ~~personnel--in--locating,--relieving--distress--of,--preserving~~
24 ~~life--of,--or--removing--survivors--from--the--site--of--a--hazard,~~
25 ~~emergency--or--disaster--to--a--place--of--safety--in--case--of--lost,~~

1 ~~stranded, entrapped, or injured persons:~~

2 ~~{10}(9)~~ "Temporary housing" means unoccupied habitable
3 dwellings, suitable rental housing, mobile homes, or other
4 readily fabricated dwellings."

5 Section 3. Section 10-3-311, MCA, is amended to read:

6 "10-3-311. Emergency or disaster expenditures --
7 restrictions. (1) The governor may authorize the incurring
8 of liabilities and expenses to be paid as other claims
9 against the state from the general fund, in the amount
10 necessary, when an emergency or disaster justifies the
11 expenditure and is declared by the governor, to meet
12 contingencies and needs arising from an emergency or
13 disaster, as defined in 10-3-103, which results in damage to
14 the works, buildings, or property of the state or any
15 political subdivision thereof or which menaces the health,
16 welfare, safety, lives, or property of any considerable
17 number of persons in any county or community of the state,
18 upon demonstration by the political jurisdiction that:

19 (a) such political jurisdiction has exhausted all
20 available emergency levies;

21 (b) the emergency is beyond the financial capability
22 of the political jurisdiction to respond and for which no
23 appropriation in the affected fund is available in
24 sufficient amount to meet the emergency or disaster; or

25 (c) federal funds available for such emergency or

1 disaster require either matching state funds or specific
2 expenditures prior to eligibility for assistance under
3 federal laws.

4 (2) No expenditures for flood-related damages may be
5 made to assist a political subdivision that is sanctioned
6 because it has flood hazard areas identified under the
7 national flood insurance program, parts 59 through 77 of 44
8 C.F.R., and does not have in effect adequate regulations for
9 such areas or has failed to enforce such regulations as
10 required by the national flood insurance program.

11 ~~{2}(3)~~ The governor is charged with the implementation
12 of the program.

13 ~~{3}(4)~~ The administration and development of rules for
14 implementation of this section must be promulgated by the
15 department."

16 Section 4. Section 10-3-401, MCA, is amended to read:

17 "10-3-401. Local and interjurisdictional disaster and
18 emergency plan -- distribution. (1) Each political
19 subdivision eligible to receive funds under this chapter
20 shall prepare a local or interjurisdictional disaster and
21 emergency plan and program covering the area for which that
22 political subdivision is responsible. This plan shall be in
23 accordance with and in support of the state disaster and
24 emergency plan and program.

25 (2) The political subdivision shall prepare and

1 distribute on behalf of the principal executive officers, in
2 written form, a clear and complete statement of:

- 3 (a) the emergency responsibilities of all local
- 4 agencies, if any, and officials; and
- 5 (b) the disaster and emergency chain of command;
- 6 (c) local evacuation authority and responsibility; and
- 7 (d) local authority and responsibility for control of
- 8 ingress and egress to and from an emergency or disaster
- 9 area."

10 NEW SECTION. Section 5. Authority of principle
11 executive officer. The principle executive officer shall:

12 (1) direct and compel the evacuation of all or part of
13 the population from an emergency or disaster area within
14 that political subdivision when necessary for the
15 preservation of life or other disaster mitigation, response,
16 or recovery; and

17 (2) control the ingress and egress to and from an
18 emergency or disaster area, the movement of persons within
19 the area, and the occupancy of premises therein.

20 NEW SECTION. Section 6. Extension of authority. Any
21 existing authority of the department of military affairs to
22 make rules on the subject of the provisions of this act is
23 extended to the provisions of this act.

24 NEW SECTION. Section 7. Codification instruction.
25 Section 5 is intended to be codified as an integral part of

1 Title 10, chapter 3, part 4, and the provisions of Title 10,
2 chapter 3, part 4, apply to section 5.

-End-

1 HOUSE BILL NO. 143
 2 INTRODUCED BY HARPER, DONALDSON
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS ON UNEMPLOYMENT INSURANCE; PROHIBITING VENDORS
 7 DELINQUENT ON UNEMPLOYMENT OR WORKERS' COMPENSATION PAYMENTS
 8 FROM BEING INCLUDED ON THE STATE'S VENDOR LIST; AMENDING
 9 SECTIONS 18-4-241, 39-51-201, 39-51-203, 39-51-204,
 10 39-51-407, 39-51-1101, 39-51-1109, 39-51-1121, 39-51-1125,
 11 39-51-1213, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-1304,
 12 39-51-2101, 39-51-2105, 39-51-2303, 39-51-2304, 39-51-2402,
 13 39-51-2403, 39-51-2410, 39-51-2501, 39-51-3105, 39-51-3202,
 14 AND 39-51-3206, MCA; REPEALING SECTION 39-51-2206, MCA; AND
 15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 18 Section 1. Section 39-51-201, MCA, is amended to read:
 19 "39-51-201. General definitions. As used in this
 20 chapter, unless the context clearly requires otherwise, the
 21 following definitions apply:
 22 (1) "Annual payroll" means the total amount of wages
 23 paid by an employer, regardless of the time of payment, for
 24 employment during a calendar year.
 25 (2) "Base period" means the first four of the last

1 five completed calendar quarters immediately preceding the
 2 first day of an individual's benefit year. However, in the
 3 case of a combined-wage claim pursuant to the arrangement
 4 approved by the secretary of labor of the United States, the
 5 base period shall be that applicable under the unemployment
 6 law of the paying state. For an individual who fails to
 7 meet the qualifications of 39-51-2105 due to a temporary
 8 total disability as defined in 39-71-116 or a similar
 9 statute of another state or the United States, the base
 10 period means the first four quarters of the last five
 11 quarters preceding the disability if a claim for
 12 unemployment benefits is filed within 24 months of the date
 13 on which the individual's disability was incurred.

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

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

1 pursuant to the arrangement approved by the secretary of
2 labor of the United States, the base period is the period
3 applicable under the unemployment law of the paying state.

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

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

9 (7) "Contributions" means the money payments to the
10 state unemployment insurance fund required by this chapter
11 but does not include assessments under 39-51-404(4).

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

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

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

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

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

23 (12) "Gross misconduct" means a criminal act, other
24 than a violation of a motor vehicle traffic law, for which
25 an individual has been convicted in a criminal court or has

1 admitted or conduct which demonstrates a flagrant and wanton
 2 disregard of and for the rights or title or interest of a
 3 fellow employee or his the employer.

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

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

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

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

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

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

21 (b) Notwithstanding any of the foregoing provisions of
 22 this subsection, all colleges and universities in this state
 23 are institutions of higher education for purposes of this
 24 part.

25 (15) "State" includes, in addition to the states of the

1 United States of America, the District of Columbia, Puerto
 2 Rico, the Virgin Islands, and the Dominion of Canada.

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

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

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

16 (i) ~~the amount of any payment including the amount~~
 17 ~~paid by an employer for insurance or annuities or into a~~
 18 ~~fund to provide for such payment made after July 17, 1987, to~~
 19 ~~or on behalf of an employee or a dependent under a plan or~~
 20 ~~system established by an employer that makes provision for~~
 21 ~~the employee generally or for a class or classes of~~
 22 ~~employees or their dependents on account of~~ MADE BY THE
 23 EMPLOYER, IF THE PAYMENT WAS MADE UNDER A PLAN ESTABLISHED
 24 FOR THE EMPLOYEES IN GENERAL OR FOR A SPECIFIC CLASS OR
 25 CLASSES OF EMPLOYEES, TO OR ON BEHALF OF THE EMPLOYEE FOR:

1 (A) retirement;

2 (B) sickness or accident disability, but in the case

3 of payments made BY AN EMPLOYER DIRECTLY to an employee or

4 dependent, ~~this subsection (17)(b)(1)(B) includes from the~~

5 ~~term "wages" only payments that are received under a~~

6 ~~workers' compensation law, ONLY THOSE PAYMENTS MADE UNDER A~~

7 ~~WORKERS' COMPENSATION LAW ARE EXCLUDED FROM "WAGES";~~

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 (18) "Week" means a period of 7 consecutive calendar

15 days ending at midnight on Saturday.

16 (19) An individual's "weekly benefit amount" means the

17 amount of benefits he the individual would be entitled to

18 receive for 1 week of total unemployment."

19 Section 2. Section 39-51-203, MCA, is amended to read:

20 "39-51-203. Employment defined. (1) "Employment",

21 subject to other provisions of this section, means service

22 by an individual or by an officer of a corporation,

23 including service in interstate commerce, performed for

24 wages or under any contract of hire, written or oral,

25 express or implied.

1 (2) (a) The term "employment" includes an individual's

2 entire service performed within or both within and without

3 this state if:

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

5 (ii) the service is not localized in any state but some

6 of the service is performed in this state and:

7 (A) the base of operations or, if there is no base of

8 operations, then the place from which such service is

9 directed or controlled, is in this state; or

10 (B) the base of operations or place from which such

11 service is directed or controlled is not in any state in

12 which some part of the service is performed, but the

13 individual's residence is in this state.

14 (b) Service is considered to be localized within a

15 state if:

16 (i) the service is performed entirely within such

17 state; or

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

19 such state, but the service performed without such state is

20 incidental to the individual's service within the state, for

21 example, is temporary or transitory in nature or consists of

22 isolated transactions.

23 (3) Service not covered under subsection (2) of this

24 section and performed entirely without this state with

25 respect to no part of which contributions are required and

1 paid under an unemployment insurance law of any other state
 2 or of the federal government is considered to be employment
 3 subject to this chapter if the individual performing such
 4 services is a resident of this state and the department
 5 approves the election of the employing unit for whom such
 6 services are performed that the entire service of such
 7 individual is considered to be employment subject to this
 8 chapter.

9 (4) Service performed by an individual for wages is
 10 considered to be employment subject to this chapter unless
 11 and until it is shown to the satisfaction of the department
 12 that:

13 (a) such individual has been and will continue to be
 14 free from control or direction over the performance of such
 15 services, both under his the individual's contract and in
 16 fact;

17 (b) such service is either outside the usual course of
 18 the business for which such service is performed or that
 19 such service is performed outside of all the places of
 20 business of the enterprise for which such service is
 21 performed; and

22 (c) such individual is customarily engaged in an
 23 independently established trade, occupation, profession, or
 24 business.

25 (5) The term "employment" includes service performed

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

14 (6) The term "employment" includes service performed
 15 ~~after--December--31--1971~~ by an individual in the employ of a
 16 religious, charitable, scientific, literary, or educational
 17 organization.

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

25 (i) the employer's principal place of business in the

1 United States is located in this state;
 2 (ii) the employer has no place of business in the
 3 United States, but:
 4 (A) the employer is an individual who is a resident of
 5 this state;
 6 (B) the employer is a corporation which is organized
 7 under the laws of this state; or
 8 (C) the employer is a partnership or a trust and the
 9 number of the partners or trustees who are residents of this
 10 state is greater than the number who are residents of any
 11 other state; or
 12 (iii) none of the criteria of sections (7)(a)(i) and
 13 (7)(a)(ii) of this subsection are met but the employer has
 14 elected coverage in this state or, the employer having
 15 failed to elect coverage in any state, the individual has
 16 filed a claim for benefits based on such service under the
 17 law of this state.
 18 (b) An "American employer", for purposes of this
 19 subsection, means a person who is:
 20 (i) an individual who is a resident of the United
 21 States;
 22 (ii) a partnership if two-thirds or more of the
 23 partners are residents of the United States;
 24 (iii) a trust if all of the trustees are residents of
 25 the United States; or

1 (iv) a corporation organized under the laws of the
 2 United States or of any state.
 3 (8) Agricultural labor exempted under 39-51-204 is
 4 considered employment ~~subject to this chapter effective~~
 5 ~~January 17, 1978~~; whenever the employing unit pays \$20,000 or
 6 more in cash to workers for agricultural labor in any
 7 quarter in the current or preceding calendar year or employs
 8 10 or more workers in agricultural labor on 20 days in 20
 9 different weeks during the current or preceding calendar
 10 year. If an employer is otherwise subject to the chapter
 11 and has agricultural employment, all employees are covered
 12 under the chapter regardless of the amount of money
 13 expended for agricultural purposes.
 14 (9) Domestic service exempted under 39-51-204(1)(b) is
 15 considered employment ~~subject to this chapter effective~~
 16 ~~January 17, 1978~~; whenever the employing unit pays \$1,000 or
 17 more in cash for domestic service in any quarter during the
 18 current or preceding calendar year. If an employer is
 19 otherwise subject to the chapter and has domestic
 20 employment, all employees are covered under the chapter
 21 regardless of the amount of money expended for domestic
 22 purposes."
 23 Section 3. Section 39-51-204, MCA, is amended to read:
 24 "39-51-204. Exclusions from definition of employment.
 25 (1) The term "employment" does not include:

1 (a) agricultural labor, except as provided in
2 39-51-203(8);

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

6 (c) service performed as an officer or member of the
7 crew of a vessel on the navigable waters of the United
8 States;

9 (d) service performed by an individual in the employ
10 of his that individual's son, daughter, or spouse and
11 service performed by a child under the age of 21 in the
12 employ of his the child's father or mother;

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

23 (f) service with respect to which unemployment
24 insurance is payable under an unemployment insurance system
25 established by an act of congress, provided that the

1 department must enter into agreements with the proper
2 agencies under such act of congress, which agreements shall
3 become effective in the manner prescribed in the Montana
4 Administrative Procedure Act for the adoption of rules, to
5 provide reciprocal treatment to individuals who have, after
6 acquiring potential rights to benefits under this chapter,
7 acquired rights to unemployment insurance under such act of
8 congress or who have, after acquiring potential rights to
9 unemployment insurance under such act of congress, acquired
10 rights to benefits under this chapter;

11 (g) services performed in the delivery and
12 distribution of newspapers or shopping news from house to
13 house and business establishments by an individual under the
14 age of 18 years, but not including the delivery or
15 distribution to any point or points for subsequent delivery
16 or distribution;

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

20 (i) service performed in the employ of a school,
21 college, or university if such service is performed by a
22 student who is enrolled and is regularly attending classes
23 at such school, college, or university or by the spouse of
24 such a student if such spouse is advised, at the time such
25 spouse commences to perform such service, that the

1 employment of such spouse to perform such service is
 2 provided under a program to provide financial assistance to
 3 such student by such school, college, or university and such
 4 employment will not be covered by any program of
 5 unemployment insurance;

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

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

20 (l) casual labor not in the course of an employer's
 21 trade or business performed in any calendar quarter, unless
 22 the cash remuneration paid for such service is \$50 or more
 23 and such service is performed by an individual who is
 24 regularly employed by such employer to perform such service.
 25 "Regularly employed" means the services are performed during

1 at least 24 days in the same quarter.

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

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

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

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

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

17 ~~(d)~~ (c) in a facility conducted for the purpose of
 18 carrying out a program of rehabilitation for individuals
 19 whose earning capacity is impaired by age or physical or
 20 mental deficiency or injury or providing remunerative work
 21 for individuals who, because of their impaired physical or
 22 mental capacity, cannot be readily absorbed in the
 23 competitive labor market by an individual receiving such
 24 rehabilitation or remunerative work;

25 ~~(e)~~ (d) as part of an unemployment work-relief or

1 work-training program assisted or financed in whole or in
 2 part by a federal agency or any agency of a state or
 3 political subdivision thereof by an individual receiving
 4 such work relief or work training; or

5 ~~{f}~~(e) for a state prison or other state correctional
 6 or custodial institution by an inmate of that institution."

7 Section 4. Section 39-51-407, MCA, is amended to read:

8 "39-51-407. Reimbursement of fund by state. ~~{i}~~ This
 9 state recognizes its obligation to replace, and hereby
 10 pledges the faith of this state that funds will be provided
 11 in the future and applied to the replacement of any of the
 12 money received ~~after July 1, 1947~~ from the United States or
 13 any agency thereof under Title III of the Social Security
 14 Act, any unencumbered balances in the unemployment insurance
 15 administration account ~~as of that date~~, any money thereafter
 16 granted to this state pursuant to the provisions of the
 17 Wagner-Peyser Act, and any money made available by the state
 18 or its political subdivisions and matched by such money
 19 granted to this state pursuant to the provisions of the
 20 Wagner-Peyser Act which the secretary of labor finds have,
 21 because of any action or contingency, been lost or have been
 22 expended for purposes other than or in amounts in excess of
 23 those found necessary by the secretary of labor for the
 24 proper administration of this chapter. Such money shall be
 25 promptly supplied by money furnished by the state of Montana

1 or any of its subdivisions for the use of the department and
 2 used only for purposes approved by the secretary of labor.
 3 The department shall, if necessary, promptly report to the
 4 governor and the governor to the legislature the amount
 5 required for such replacement.

6 ~~{2}--This section shall not be construed to relieve~~
 7 ~~this state of its obligation with respect to funds received~~
 8 ~~prior to July 1, 1947 pursuant to the provisions of Title~~
 9 ~~III of the Social Security Act."~~

10 Section 5. Section 39-51-1101, MCA, is amended to
 11 read:

12 "39-51-1101. Commencement and termination of coverage
 13 under chapter. (1) Any employing unit which is or becomes an
 14 employer subject to this chapter within any calendar year
 15 shall be subject to this chapter during the whole of such
 16 calendar year, except that this subsection shall not apply
 17 to an employing unit electing coverage as provided for in
 18 39-51-1102.

19 (2) Except as otherwise provided in 39-51-1102, an
 20 employing unit shall cease to be an employer subject to this
 21 chapter only as of January 1 of any calendar year only if it
 22 files with the department prior to the last day of February
 23 of such year a written application for termination of
 24 coverage and the department finds that the total wages
 25 payable for employment by said employer in the preceding

1 calendar year did not exceed ~~9500~~ \$1,000. For the purpose of
 2 this subsection, the two or more employing units mentioned
 3 in subsection (2) or (3) of 39-51-202 shall be treated as a
 4 single employing unit."

5 Section 6. Section 39-51-1109, MCA, is amended to
 6 read:

7 "39-51-1109. Tax appeals. Any person aggrieved by any
 8 decision, determination, or redetermination of the
 9 department involving contribution liability, contribution
 10 rate, application for refund, or the charging of benefit
 11 payments to employers making payment in lieu of
 12 contributions is entitled to a review in accordance with
 13 Title 2, chapter 4, parts 6 and 7. Such decision,
 14 determination, or redetermination is final unless an
 15 interested party entitled to notice thereof applies for a
 16 review within 10 days after notification was mailed to the
 17 last known address, provided that the period may be extended
 18 for good cause."

19 Section 7. Section 39-51-1121, MCA, is amended to
 20 read:

21 "39-51-1121. Definitions. As used in this part and
 22 part 12, the following definitions apply:

23 (1) "Computation date" means the reporting period
 24 ending September 30 preceding the calendar year for which a
 25 covered employer's contribution rate is effective.

1 (2) "Cutoff date" means December 31 immediately
 2 following the computation date. The department may extend
 3 the cutoff date in meritorious cases.

4 (3) "Deficit employer" means ~~a--covered-employer an~~
 5 employer who is subject under this chapter and who has
 6 established a record of accumulated benefits charged to his
 7 the employer's account in excess of his the employer's
 8 accumulated contributions paid as of the cutoff date ~~and-has~~
 9 ~~a-minus-experience-factor.~~

10 (4) "Department" means the department of labor and
 11 industry.

12 (5) "Eligible employer" means ~~a--covered--employer an~~
 13 employer who is HAS BEEN subject under this chapter for the
 14 3 years immediately preceding the computation date and who
 15 has:

16 (a) ~~paid--contributions--during--each--of--the--3--fiscal~~
 17 ~~years--immediately--preceding--the--computation--date~~ filed all
 18 contribution reports prescribed by the department;

19 (b) ~~with--respect--to--such--3--fiscal--years--filed--all~~
 20 ~~contribution--reports--prescribed--by--the--department~~ paid all
 21 contributions and assessments under 39-51-404(4), and
 22 penalties and interest thereon;

23 (c) ~~paid--all--contributions--due--with--respect--to--the--3~~
 24 ~~fiscal--years--before--the--cutoff--date--of--the--rate--year~~
 25 established a record of accumulated contributions in excess

1 of benefits charged to the employer's account; and
 2 (d) established--a-record-of-accumulated-contributions
 3 in-excess-of-benefits-charged-to-his-account,-and paid wages
 4 in at least 1 of the 8 calendar quarters preceding the
 5 computation date.

6 (e)--achieved-a-plus-experience-factor.
 7 (6) "Fiscal year" means the four consecutive calendar
 8 quarters ending on September 30.

9 (7) "Governmental entities" means the state or any
 10 political subdivision of the state or an instrumentality of
 11 the state or a political subdivision, including any
 12 employing unit funded directly by tax levies.

13 (8) "Unrated employer" means a-covered-employer-who
 14 has-not-paid-contributions-in-each-of--the--3--fiscal--years
 15 immediately--preceding--the--computation-date-or-an-employer
 16 who-has-established-a-record-of-accumulated-contributions-in
 17 excess-of-benefits-charged-to-his-account-but-has-not--filed
 18 all--required--payroll--reports-or-paid-contributions-by-the
 19 cutoff-date-for-any-of-the-quarters-in-the--3--fiscal--years
 20 immediately--preceding--the-computation-date an employer who
 21 is subject under this chapter and who does not meet all the
 22 criteria of an eligible or a deficit employer."

23 Section 8. Section 39-51-1125, MCA, is amended to
 24 read:

25 "39-51-1125. Computation of payments in lieu of

1 contributions. (1) Qualified After June 30, 1987, qualified
 2 employers electing to make payments in lieu of contributions
 3 shall pay into the fund an amount equivalent to the full
 4 amount of regular benefits plus one-half-of-the-amount the
 5 state's share of extended benefits paid to individuals based
 6 on wages paid by the employing unit. After December 31,
 7 1978, governmental entities shall pay the full amount of
 8 extended benefits.

9 (2) If benefits paid an individual are based on wages
 10 paid by both the employer and one or more other employers,
 11 the amount payable by any one employer to the fund bears the
 12 same ratio to total benefits paid to the individual as the
 13 base period wages paid to the individual by such employer
 14 bear to the total amount of base period wages paid to the
 15 individual by all his the individual's base period
 16 employers.

17 (3) If the base period wages of an individual include
 18 wages from more than one such employer, the amount to be
 19 paid into the fund with respect to the benefits paid to the
 20 individual shall be prorated among the liable employers in
 21 proportion to the wages paid to the individual by each such
 22 employer during the base period.

23 (4) The amount of payment required from employers
 24 shall be ascertained by the department monthly and becomes
 25 due and payable by the employer quarterly as directed in

1 this chapter. Penalty and interest for delinquency shall be
2 assessed such employers as specified in 39-51-1301.

3 ~~(5) A nonprofit organization which elects to make
4 payments in lieu of contributions into the unemployment
5 insurance fund is not liable to make such payments with
6 respect to the benefits paid to any individual whose base
7 period wages include wages for previously uncovered
8 services, as defined in 39-51-204(3)(c), to the extent that
9 the unemployment insurance fund is reimbursed for such
10 benefits pursuant to section 121 of Public Law 94-566."~~

11 Section 9. Section 39-51-1213, MCA, is amended to
12 read:

13 "39-51-1213. Classification of employers for
14 experience rating purposes. (1) The department shall for
15 each calendar year classify employers in accordance with
16 their actual experience in the payment of contributions and
17 with respect to benefits charged against their accounts,
18 with contribution rates reflecting benefit experience. Each
19 employer's rate for a calendar year shall be determined on
20 the basis of his the employer's record as of October 1 of
21 the preceding calendar year.

22 (2) In making the classification, each eligible and
23 deficit employer's contribution rate is determined in the
24 manner set forth below:

25 (a) Each employer is given an "experience factor"

1 which is contributions paid since October 1, 1981, minus
2 benefits charged on each employer's account since October 1,
3 1981, divided by his the employer's average annual taxable
4 payroll rounded to the next lower dollar amount for the 3
5 fiscal years immediately preceding the computation date. The
6 computation of the "experience factor" shall be to six
7 decimal places.

8 (b) Schedules shall be prepared listing all eligible
9 and deficit employers in inverse numerical order of their
10 experience factors. There shall be listed on such schedules
11 for each employer in addition to the experience factor:

12 (i) the amount of his the employer's taxable payroll
13 for the fiscal year ending on the computation date; and

14 (ii) the cumulative total consisting of the sum of the
15 employer's taxable payroll for the fiscal year ending on the
16 computation date and the corresponding taxable payrolls for
17 all other employers preceding him that employer on the
18 schedules.

19 (3) The cumulative taxable payroll amounts listed on
20 the schedules provided for in 39-51-1218 shall be segregated
21 into groups that will yield approximately the average tax
22 rate according to the tax schedule assigned for that
23 particular taxable year. Each group shall be identified by
24 the rate class number listed in the table which represents
25 the percentage limits of each group. Each employer on the

1 schedules is assigned that contribution rate opposite his
2 that employer's rate class for the tax schedule in effect
3 for the taxable year.

4 (4) (a) If the grouping of rate classes requires the
5 inclusion of exactly one-half of an employer's taxable
6 payroll, the employer is assigned the lower of the two rates
7 designated for the two classes in which the halves of his
8 that employer's taxable payroll are so required.

9 (b) If the group of rate classes requires the
10 inclusion of a portion other than exactly one-half of an
11 employer's taxable payroll, the employer is assigned the
12 rate designated for the class in which the greater part of
13 his that employer's taxable payroll is so required.

14 (c) If one or more employers on the schedules have
15 experience factors identical to that of the last employer
16 included in a particular rate class, all such employers are
17 included in and assigned the contribution rate specified for
18 such class, notwithstanding the provisions of 39-51-1214.

19 (5) If the taxable payroll amount or the experience
20 factor or both such taxable payroll amount and experience
21 factor of any eligible or deficit employer listed on the
22 schedules is changed, the employer is placed in that
23 position on the schedules which he the employer would have
24 occupied had his that employer's taxable payroll amount or
25 experience factor as changed been used in determining his

1 that employer's position in the first instance, but such
2 change does not affect the position or rate classification
3 of any other employer listed on the schedules and does not
4 affect the rate determination for previous years.

5 (6) Deficit employers who have not filed all required
6 payroll reports or paid all contributions due by the cutoff
7 date must be assigned the maximum contribution rate in
8 effect for the taxable year."

9 Section 10. Section 39-51-1219, MCA, is amended to
10 read:

11 "39-51-1219. Procedures for the substitution, merger,
12 or acquisition of an employer account by a successor
13 employing unit. (1) Subject to the provisions of subsection
14 (3), whenever any individual or organization (whether or not
15 a covered employer) in any manner succeeds to or acquires
16 all or substantially all of the business of an employer who
17 at the time of acquisition was a covered employer and
18 whenever in respect to whom the department finds that the
19 business of the predecessor is continued solely by the
20 successor:

21 (a) the separate account and the actual contribution,
22 benefit, and taxable payroll experience of the predecessor
23 shall, upon the joint application of the predecessor and the
24 successor within 90 days after such acquisition and approval
25 by the department, be transferred to the successor employer

1 for the purpose of determining the successor's liability and
2 rate of contribution; and

3 (b) any successor who was not an employer on the date
4 of acquisition becomes a covered employer as of such date.

5 (2) Whenever any individual or organization (whether
6 or not a covered employer) in any manner succeeds to or
7 acquires part of the business of an employer who at the time
8 of acquisition was a covered employer and whenever such
9 portion of the business is continued by the successor:

10 (a) so much of the separate account and the actual
11 contribution, benefit, and taxable payroll experience of the
12 predecessor as is attributable to the portion of the
13 business transferred, as determined on a pro rata basis in
14 the same ratio that the wages of covered employees properly
15 allocable to the transferred portion of the business bears
16 to the payroll of the predecessor in the last four completed
17 calendar quarters immediately preceding the date of
18 transfer, shall, upon the joint application of the
19 predecessor and the successor within 90 days after such
20 acquisition and approval by the department, be transferred
21 to the successor employer for the purpose of determining the
22 successor's liability and rate of contribution; and

23 (b) any successor who was not an employer on the date
24 of acquisition becomes a covered employer as of such date.

25 (3) (a) The 90-day period may be extended at the

1 discretion of the department.

2 (b) Whenever a predecessor covered employer has a
3 deficit experience rating account as of the last computation
4 date, the transfer provided for in subsections (1) and (2)
5 is mandatory except when it is shown by substantial evidence
6 that neither the management, or ownership, or nor both the
7 management and ownership are not substantially the same for
8 the successor as for the predecessor, in which case the
9 successor shall begin with the rate of a new employer.
10 Whenever such mandatory transfer involves only a portion of
11 the experience rating record and the predecessor or
12 successor employers fail to supply the required payroll
13 information within 10 days after notice, the transfer shall
14 be based on estimates of the applicable payrolls.

15 (4) (a) If the successor was a covered employer prior
16 to the date of the acquisition of all or a part of the
17 predecessor's business, his the successor's rate of
18 contribution, effective the first day of the calendar year
19 immediately following the date of acquisition, is based on
20 the combined experience of the predecessor and successor.

21 (b) If the successor was not a covered employer prior
22 to the date of the acquisition of all or a part of the
23 predecessor's business, his the successor's rate is the rate
24 applicable to the predecessor with respect to the period
25 immediately preceding the date of acquisition, but if there

1 was more than one predecessor, the successor's rate shall be
 2 a newly computed rate based on the combined experience of
 3 the predecessors, becoming effective immediately after the
 4 date of acquisition and remaining in effect for the balance
 5 of the rate year."

6 Section 11. Section 39-51-1301, MCA, is amended to
 7 read:

8 "39-51-1301. (Temporary) Penalty and interest on
 9 past-due contributions. (1) Contributions unpaid on the date
 10 on which they are due and payable, as provided by
 11 subsections (1) and (2) of 39-51-1103 and 39-51-1125, that
 12 are paid within--20--days--after by the end of the month
 13 following the due date shall be subject to a penalty
 14 assessment of \$10 or 10% of the contribution due, whichever
 15 is greater. If the contributions are not paid within--20
 16 days--after by the end of the month following the due date,
 17 the employer shall be subject to a penalty assessment of \$15
 18 or 15% of the contributions due, whichever is greater. All
 19 past-due contributions shall bear interest at the rate of
 20 18% a year, to be prorated on a daily basis.

21 (2) A penalty of \$40 shall be assessed whenever, as
 22 the result of a willful refusal of an employer to furnish
 23 wage information or pay contributions on time, the
 24 department issues a subpoena to obtain wage information or
 25 makes a summary or jeopardy assessment pursuant to

1 39-51-1302.

2 (3) There is an account in the federal special revenue
 3 fund. Penalties and interest collected under this section
 4 must be deposited in that account. Money deposited in that
 5 account and appropriated to the department must be used by
 6 the department to administer this chapter and for programs
 7 to train and retrain unemployed and underemployed persons.
 8 Money in the account not appropriated for these purposes
 9 must be transferred by the department to the unemployment
 10 insurance trust fund at the end of each fiscal year.

11 (4) When failure to pay contributions on time was not
 12 caused by willful intent of the employer, the department may
 13 abate the penalty and interest.

14 (5) All money accruing to the unemployment insurance
 15 trust fund from interest and penalties collected on past-due
 16 contributions must be used solely for the payment of
 17 unemployment insurance benefits and may not be used for any
 18 other purpose.

19 39-51-1301. (Effective July 1, 1989) Penalty and
 20 interest on past-due contributions. (1) Contributions unpaid
 21 on the date on which they are due and payable, as provided
 22 by subsections (1) and (2) of 39-51-1103 and 39-51-1125,
 23 that are paid within-20-days-after by the end of the month
 24 following the due date shall be subject to a penalty
 25 assessment of \$10 or 10% of the contribution due, whichever

1 is greater. If the contributions are not paid ~~within--20~~
 2 ~~days--after~~ by the end of the month following the due date,
 3 the employer shall be subject to a penalty assessment of \$15
 4 or 15% of the contributions due, whichever is greater. All
 5 past-due contributions shall bear interest at the rate of
 6 18% a year, to be prorated on a daily basis.

7 (2) A penalty of \$40 shall be assessed whenever, as
 8 the result of a willful refusal of an employer to furnish
 9 wage information or pay contributions on time, the
 10 department issues a subpoena to obtain wage information or
 11 makes a summary or jeopardy assessment pursuant to
 12 39-51-1302.

13 (3) Interest and penalties collected pursuant to this
 14 section shall be paid into the unemployment insurance trust
 15 fund.

16 (4) When failure to pay contributions on time was not
 17 caused by willful intent of the employer, the department may
 18 abate the penalty and interest.

19 (5) All money accruing to the unemployment insurance
 20 trust fund from interest and penalties collected on past-due
 21 contributions must be used solely for the payment of
 22 unemployment insurance benefits and may not be used for any
 23 other purpose."

24 Section 12. Section 39-51-1303, MCA, is amended to
 25 read:

1 "39-51-1303. Collection of unpaid contributions by
 2 civil action. (1) If, after due notice, any employer
 3 defaults in any payment of contributions or interest
 4 thereon, the department may in at its discretion initiate a
 5 civil action in the name of the Montana department of labor
 6 and industry to collect the amount due, and the employer
 7 adjudged in default shall pay the costs of such action. ~~The~~
 8 ~~venue--for--such--action--may--in--the--discretion--of--the~~
 9 ~~department,--be--in--Lewis--and--Clark--County;~~

10 (2) An action for the collection of contributions due
 11 must be brought within 5 years after the due date of such
 12 contributions or it is barred.

13 (3) The department may pursue its remedy under either
 14 this section or 39-51-1304, or both."

15 Section 13. Section 39-51-1304, MCA, is amended to
 16 read:

17 "39-51-1304. Lien for payment of unpaid contributions
 18 and assessments -- levy and execution. Unpaid contributions
 19 and assessments under 39-51-404(4), including penalties and
 20 interest assessed thereon, have the effect of a judgment
 21 against the employer, arising at the time ~~the--contributions~~
 22 such payments are due. The department may issue a
 23 certificate of lien setting forth the amount of
 24 contributions--due--and--accrued--interest payments due and
 25 directing the clerk of the district court of any county of

1 the state to enter the certificate as a judgment in the
 2 docket pursuant to 25-9-301. From the time the judgment is
 3 docketed, it becomes a lien upon all real and personal
 4 property of the employer. FROM THE TIME THE JUDGMENT IS
 5 FILED WITH THE SECRETARY OF STATE OR A REGISTRAR OF PERSONAL
 6 PROPERTY SPECIFICALLY DESCRIBING THE PERSONAL PROPERTY, IT
 7 BECOMES A LIEN UPON PERSONAL PROPERTY OF THE EMPLOYER. After
 8 the due process requirements of 39-51-1109 and 39-51-2403
 9 have been satisfied, the department may enforce the judgment
 10 pursuant to Title 25, chapter 13, except that the department
 11 may enforce the judgment at any time within 10 years of the
 12 creation of the lien."

13 Section 14. Section 39-51-2101, MCA, is amended to
 14 read:

15 "39-51-2101. Total unemployment -- when. An individual
 16 shall be deemed totally unemployed in any week during which
 17 he the individual performed no work and earned no wages or a
 18 week of less than full-time work with wages of less than 2
 19 times his the individual's weekly benefit amount. No
 20 ~~individual is unemployed in any week that he is~~
 21 ~~self-employed."~~

22 Section 15. Section 39-51-2105, MCA, is amended to
 23 read:

24 "39-51-2105. Qualifying wages. (i) ~~To qualify as an~~
 25 ~~insured worker an individual must have been paid wages for~~

1 ~~insured work in the quarters of his base period an amount~~
 2 ~~totaling not less than 1 1/2 times his base period high~~
 3 ~~quarter wages.~~

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

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

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

17 (b) ~~which:~~

18 (i) ~~are agricultural labor, as defined in~~
 19 ~~39-51-203(8); or domestic service, as defined in~~
 20 ~~39-51-203(9); or~~

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

1 assistance---under--Title--II--of--the--Emergency--Jobs--and
 2 Unemployment-Assistance-Act-of-1974-was-paid-on-the-basis-of
 3 such-services."

4 Section 16. Section 39-51-2303, MCA, is amended to
 5 read:

6 "39-51-2303. Disqualification for discharge due to
 7 misconduct. An individual shall be disqualified for benefits
 8 if-he-has-been after being discharged:

9 (1) for misconduct connected with his the individual's
 10 work or affecting his the individual's employment until an
 11 the individual has performed services, other than
 12 self-employment, for which remuneration is received equal to
 13 or in excess of eight times his the individual's weekly
 14 benefit amount subsequent to the week in which the act
 15 causing the disqualification occurred.

16 (2) for gross misconduct connected with his the
 17 individual's work or committed on the employer's premises,
 18 as determined by the department, for a period of ~~12--months~~
 19 52 weeks."

20 Section 17. Section 39-51-2304, MCA, is amended to
 21 read:

22 "39-51-2304. Disqualification for failure to apply for
 23 or to accept suitable work. (1) ~~Effective-April-17-1977--an~~
 24 An individual is disqualified for benefits if he the
 25 individual fails without good cause either to apply for

1 available and suitable work when so directed by the
 2 employment office or the department or to accept an offer of
 3 suitable work ~~offered-to-him~~ which he the individual is
 4 physically able and mentally qualified to perform or to
 5 return to his customary self-employment, if any, when so
 6 directed by the department. Such disqualification continues
 7 for the week in which such failure occurs and until the
 8 individual has performed services, other than
 9 self-employment, for which remuneration is received equal to
 10 or in excess of his six times that individual's weekly
 11 benefit amount ~~in--6-separate-weeks~~ subsequent to the date
 12 the act causing the disqualification occurred, with 6 weeks'
 13 reduction in benefit duration, as determined by the
 14 department, provided he the individual has not left this
 15 work under disqualifying circumstances.

16 (2) In determining whether or not any work is suitable
 17 for an individual, the department shall consider:

18 (A) the degree of risk involved to his the
 19 individual's health, safety, and morals; his

20 (B) the individual's physical fitness and prior
 21 training; his

22 (C) THE INDIVIDUAL'S experience and previous
 23 earnings; his

24 (D) THE INDIVIDUAL'S length of unemployment and
 25 prospects for securing local work in his the customary

1 occupation; and

2 (E) the distance of the available work from his the
3 individual's residence.

4 (3) Notwithstanding any other provisions of this
5 chapter, including subsection (4), no work may be considered
6 suitable and benefits may not be denied under this chapter
7 to any otherwise eligible individual for refusing to accept
8 new work under any of the following conditions:

9 (a) if the position offered is vacant due directly to
10 a strike, lockout, or other labor dispute;

11 (b) if the wages, hours, or other conditions of the
12 work offered are substantially less favorable to the
13 individual than those prevailing for similar work in the
14 locality;

15 (c) if, as a condition of being employed, the
16 individual would be required to join a company union or to
17 resign from or refrain from joining any bona fide labor
18 organization.

19 (4) Subject to subsection (3), after 13 weeks of
20 unemployment, suitable work is work that meets the criteria
21 in this section and that offers 75% of the individual's
22 earnings in his previous insured work in his the
23 individual's customary occupation. No individual, however,
24 is required to accept a job paying less than the federal
25 minimum wage."

1 Section 18. Section 39-51-2402, MCA, is amended to
2 read:

3 "39-51-2402. Initial determination -- redetermination.

4 (1) A representative designated by the department and
5 hereinafter referred to as a deputy shall promptly examine
6 the claim and, on the basis of the facts found by him the
7 deputy, shall either determine whether or not such claim is
8 valid and, if valid, the week with respect to which benefits
9 shall commence, the weekly benefit amount payable, and the
10 maximum duration thereof or shall refer such claim or any
11 question involved therein to an appeals referee who shall
12 make his the decision with respect thereto in accordance
13 with the procedure prescribed in 39-51-2403. The deputy
14 shall promptly notify the claimant and any other interested
15 party of the decision and the reasons therefor.

16 (2) The deputy may for good cause reconsider his the
17 decision and shall promptly notify the claimant and such
18 other interested parties of his the amended decision and the
19 reasons therefor.

20 (3) No determination or redetermination of an initial
21 or additional claim shall be made under this section unless
22 5 days' notice of the time and place of the claimant's
23 interview for examination of the claim is mailed to each
24 interested party.

25 (4) A determination or redetermination shall be deemed

1 final unless an interested party entitled to notice thereof
 2 applies for reconsideration of the determination or appeals
 3 therefrom within ~~5 days after delivery of such notification~~
 4 ~~or within 7~~ 10 days after such notification was mailed to
 5 his the interested party's last known address, provided that
 6 such period may be extended for good cause."

7 Section 19. Section 39-51-2403, MCA, is amended to
 8 read:

9 "39-51-2403. Decision of appeals referee. After a
 10 hearing, an appeals referee shall make findings and
 11 conclusions promptly and on the basis thereof affirm,
 12 modify, or reverse the deputy's determination or
 13 redetermination. Each interested party shall be furnished
 14 promptly a copy of the decision and the supporting findings
 15 and conclusions. This decision shall be final unless
 16 further review is initiated pursuant to 39-51-2404 within 5
 17 ~~days after delivery of such notification or within 7~~ 10 days
 18 after such notification was mailed to his the interested
 19 party's last known address, provided that such period may be
 20 extended for good cause."

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

23 "39-51-2410. Finality of board's decision -- judicial
 24 review. (1) Any decision of the board in the absence of an
 25 appeal therefrom as herein provided shall become final 30

1 days after the date of notification or mailing thereof,
 2 ~~except in the case of the department when such decision~~
 3 ~~becomes final 20 days following the board's decision,~~ and
 4 judicial review thereof shall be permitted only after any
 5 party claiming to be aggrieved thereby has exhausted his all
 6 remedies before the board. ~~The department shall be deemed~~
 7 ~~to be a party to any judicial action involving any such~~
 8 ~~decision and may be represented in any such action by an~~
 9 ~~attorney employed by the department or at the department's~~
 10 ~~request by the attorney general.~~ THE DEPARTMENT IS DEEMED
 11 TO BE A PARTY TO ANY JUDICIAL ACTION INVOLVING ANY SUCH
 12 DECISION AND MAY BE REPRESENTED IN ANY SUCH ACTION BY AN
 13 ATTORNEY EMPLOYED BY THE DEPARTMENT OR, AT THE DEPARTMENT'S
 14 REQUEST, BY THE ATTORNEY GENERAL.

15 (2) Within 30 days after the date of notification or
 16 mailing of the decision of the board, any party aggrieved
 17 thereby may secure judicial review thereof by commencing an
 18 action in the district court of the county in which said
 19 party resides and in which action any other party to the
 20 proceeding before the board shall be made a defendant. In
 21 such action a petition, which need not be verified but which
 22 shall state the grounds upon which a review is sought, shall
 23 be served upon the commissioner of labor and industry and
 24 all other interested parties in the manner provided in the
 25 Montana Rules of Civil Procedure.

1 (3) ~~With--its-answer, the~~ The department shall certify
 2 and file with said court all documents and papers and a
 3 transcript record of all testimony taken in the matter,
 4 together with the board's findings of fact and decision.
 5 The board may also in its discretion certify to such court
 6 questions 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~~ EXCEPT CASES ARISING UNDER THE WORKERS'
 20 COMPENSATION LAW OF THIS STATE.

21 (6) An appeal may be taken from the decision of the
 22 district court to the supreme court of Montana in the same
 23 manner, but not inconsistent with the provisions of this
 24 chapter, as is provided in civil cases. It shall not be
 25 necessary in any judicial proceeding under this section to

1 enter exceptions to the rulings of the board and no bond
 2 shall be required for entering such appeal. Upon the final
 3 determination of such judicial proceeding, the department
 4 shall enter an order in accordance with such determination."

5 Section 21. Section 39-51-2501, MCA, is amended to
 6 read:

7 "39-51-2501. Definitions. As used in this part, unless
 8 the context clearly requires otherwise, the following
 9 definitions apply:

10 (1) "Extended benefit period" means a period which:

11 (a) begins with the third week after a week for which
 12 there is a state "on" indicator, provided that no extended
 13 benefit period may begin by reason of a state "on" indicator
 14 before the 14th week following the end of a prior extended
 15 benefit period which was in effect with respect to this
 16 state; and

17 (b) ends with the third week after the first week for
 18 which there is a state "off" indicator or the 13th
 19 consecutive week of such period.

20 (2) (a) "Rate of insured unemployment", for purposes
 21 of 39-51-2504 and 39-51-2505, means the percentage derived
 22 by dividing the average weekly number of individuals filing
 23 claims for regular benefits in this state for weeks of
 24 unemployment with respect to the most recent
 25 13-consecutive-week period, as determined by the department

1 on the basis of its reports to the U.S. secretary of labor,
2 by the average monthly employment covered under this chapter
3 for the first 4 of the most recent 6 completed calendar
4 quarters ending before the end of such 13-week period.

5 (b) Computations required by the provisions of
6 subsection (2)(a) shall be made by the department in
7 accordance with regulations prescribed by the U.S. secretary
8 of labor.

9 (3) "Regular benefits" means benefits payable to an
10 individual under this chapter or under any other state law,
11 including benefits payable to federal civilian employees and
12 to ex-servicemen ex-service personnel pursuant to 5 U.S.C.
13 chapter 85, other than extended benefits.

14 (4) "Extended benefits" means benefits, including
15 benefits payable to federal civilian employees and to
16 ex-servicemen ex-service personnel pursuant to 5 U.S.C.
17 chapter 85, payable to an individual under the provisions of
18 this part for weeks of unemployment in his the individual's
19 eligibility period.

20 (5) "Eligibility period", ~~of an individual relating to~~
21 extended benefits, means the period consisting of the weeks
22 in his the individual's benefit year which begin in an
23 extended benefit period and, if his the individual's benefit
24 year ends within such extended benefit period, any weeks
25 thereafter which begin in such period.

1 (6) "Exhaustee" means an individual who, with respect
2 to any week of unemployment in his the eligibility period:

3 (a) has received, prior to such week, all of the
4 regular benefits that were available to--him under this
5 chapter or any other state law, including dependents'
6 allowances and benefits payable to federal civilian
7 employees and ex-servicemen ex-service personnel under 5
8 U.S.C. chapter 85, in his the current benefit year that
9 includes such week; provided that, for the purposes of this
10 subsection, an individual shall be deemed to have received
11 all of the regular benefits that were available to--him
12 although, as a result of a pending appeal with respect to
13 wages that were not considered in the original monetary
14 determination ~~in-his~~ of the benefit year, he the individual
15 may subsequently be determined to be entitled to added
16 regular benefits;

17 (b) his the benefit year having expired prior to such
18 week, has no or insufficient wages on the basis of which he
19 the individual could establish a new benefit year that would
20 include such week;

21 (c) has no right to unemployment benefits or
22 allowances, as the case may be, under the Railroad
23 Unemployment Insurance Act, ~~the Trade-Expansion-Act-of-1962,~~
24 ~~the Automotive-Products-Trade-Act-of-1965,~~ and such other
25 federal laws as are specified in regulations issued by the

1 U.S. secretary of labor; and

2 (d) has not received and is not seeking unemployment
3 benefits under the unemployment compensation law of Canada,
4 but if he the individual is seeking such benefits and the
5 appropriate agency finally determines that he the individual
6 is not entitled to benefits under such law, he the
7 individual is considered an exhaustee.

8 (7) "State law" means the unemployment insurance law
9 of any state approved by the U.S. secretary of labor under
10 section 3304 of the Internal Revenue Code of 1954."

11 Section 22. Section 39-51-3105, MCA, is amended to
12 read:

13 "39-51-3105. Assignment, pledge, or encumbrance of
14 right to benefits void -- benefits exempt from levy,
15 execution, attachment, or other remedy for collection of
16 debt -- exception. Any assignment, pledge, or encumbrance of
17 any right to benefits which are or may become due or payable
18 under this chapter shall be void, and such rights to
19 benefits shall be exempt from levy, execution, attachment,
20 or any other remedy whatsoever provided for the collection
21 of debt, and benefits received by any individual, so long as
22 they are not mingled with other funds of the recipient,
23 shall be exempt from any remedy whatsoever for the
24 collection of all debts except debts--incurred--for
25 necessities-furnished-to-such-individual-or-his-spouse-or

1 dependents---during---the--time--when--such--individual--was
2 unemployed as provided in 39-51-3106. Any waiver of any
3 exemption provided for in this section shall be void."

4 Section 23. Section 39-51-3202, MCA, is amended to
5 read:

6 "39-51-3202. Making false statement or representation
7 or failing to disclose material fact in order to obtain or
8 increase benefits -- criminal penalty. (1) A person who, in
9 order to obtain or increase for himself personal gain or for
10 any other person benefits under this chapter or under an
11 employment security law of any other state or territory or
12 the federal government, knowingly makes a false statement or
13 representation or knowingly fails to disclose a material
14 fact is guilty of a crime under 45-7-203, and the department
15 may cause criminal proceedings to be initiated against him
16 the person.

17 (2) A person will be required to repay to the
18 department an amount as determined by 39-51-3201(2).

19 (3) For purposes of this section, restitution awarded
20 under this section must include a sum equal to the amount
21 wrongfully received plus 18% interest a year notwithstanding
22 the provisions of 25-9-205."

23 Section 24. Section 39-51-3206, MCA, is amended to
24 read:

25 "39-51-3206. Liability---for---wrongful---or---improper

1 ~~receipt of benefits~~ Collection of benefit overpayments. Any
 2 ~~person---who,---by---reason---of---the---nondisclosure---or~~
 3 ~~misrepresentation-by-him-or-by-another-of-a-material-fact,~~
 4 ~~irrespective---of---whether---such---nondisclosure---or~~
 5 ~~misrepresentation-was-known-or-fraudulent,-has-received-any~~
 6 ~~sum--as-benefits-under-this-chapter-while-any-conditions-for~~
 7 ~~the-receipt-of-benefits-imposed-by--this--chapter--were--not~~
 8 ~~fulfilled--in-his-case--or--while-he-was-disqualified-from~~
 9 ~~receiving--benefits--shall,-in--the--discretion--of--the~~
 10 ~~department,--either-be-liable-to-have-such-sum-deducted-from~~
 11 ~~any-future-benefits-payable-to-him--under--this--chapter--or~~
 12 ~~shall---be---liable---to---repay---to---the---department--for--the~~
 13 ~~unemployment-insurance-fund-a-sum-equal--to--the--amount--so~~
 14 ~~received--by--him,--and-such-sum-shall-be-collectible-in-the~~
 15 ~~manner-provided-in-this-chapter-for-the-collection--of--past~~
 16 ~~due--contributions;--An--action--for--collection-of-overpaid~~
 17 ~~benefits-must-be-brought-within-5-years-after--the--date--of~~
 18 ~~such--overpayment--or--it--is--barred. A person who receives~~
 19 benefits not authorized by this chapter shall repay to the
 20 department either directly or, as authorized by the
 21 department, by offset of future benefits to which the
 22 claimant may be entitled, or by a combination of both
 23 methods, a sum equal to the amount of the overpayment. The
 24 sum is collectible in the manner provided in this chapter
 25 for the collection of past due contributions unless the

1 department finds that the benefits were received through no
 2 fault of the person and the recovery of the benefits would
 3 be against equity and good conscience. An action for
 4 collection of overpaid benefits must be brought within 5
 5 years after the date of the overpayment. Notwithstanding any
 6 other provision of this chapter, the department may recover
 7 an overpayment of benefits paid to any individual under this
 8 state or another state law or under an unemployment benefit
 9 program of the United States."

10 NEW SECTION. Section 25. Authority to determine
 11 uncollectibility of debts -- transfer of debts for
 12 collection -- liability for payment of fees and costs of
 13 collection. (1) After making all reasonable efforts to
 14 collect unpaid contribution CONTRIBUTIONS, assessments under
 15 39-51-404(4), and penalties and interest thereon, or
 16 overpaid benefits under 39-51-3206 and interest thereon, the
 17 department may determine a debt to be uncollectible. Upon
 18 determining that a debt is uncollectible, the department may
 19 transfer the debt to the department of revenue for
 20 collection as provided in 17-4-104.

21 (2) Subject to approval by the department, reasonable
 22 fees or costs of collection incurred by the department of
 23 revenue may be added to the amount of the debt, including
 24 added fees or costs. The debtor is liable for repayment of
 25 the amount of the debt, plus fees or costs added pursuant to

1 this subsection. All money collected must be returned to the
 2 department to be applied to the debt, except that all fees
 3 or costs collected must be retained by the department of
 4 revenue. If less than the full amount of the debt is
 5 collected, the department of revenue shall retain only a
 6 proportionate share of the collection fees or costs.

7 Section 26. Section 18-4-241, MCA, is amended to read:

8 "18-4-241. Authority to remove or suspend from
 9 vendors' list. (1) The department may remove a person for
 10 cause from consideration for award of contracts. The removal
 11 may not be for a period of more than 3 years.

12 (2) The department may suspend a person from
 13 consideration for award of contracts if there is probable
 14 cause to believe that the person has engaged in activities
 15 that may lead to removal. The suspension may not be for a
 16 period exceeding 3 months unless an indictment has been
 17 issued for an offense that would be a cause for removal
 18 under subsection (3), in which case the suspension must, at
 19 the request of the attorney general, remain in effect until
 20 after the trial of the suspended person. The authority to
 21 remove or suspend must be exercised in accordance with rules
 22 adopted by the department.

23 (3) The causes for removal or suspension include the
 24 following:

25 (a) violation of contract provisions, as set forth in

1 (i) and (ii) of this subsection, of a character which is
 2 regarded by the department to be so serious as to justify
 3 removal action:

4 (i) deliberate failure without good cause to perform
 5 in accordance with the specifications or within the time
 6 limit provided in the contract; or

7 (ii) a recent record of failure to perform or of
 8 unsatisfactory performance in accordance with the terms of
 9 one or more contracts, provided that failure to perform or
 10 unsatisfactory performance caused by acts beyond the control
 11 of the contractor may not be considered to be a basis for
 12 removal;

13 (b) failure to respond to a number of solicitations
 14 over a period of time as determined by the department in
 15 accordance with rules, and after adequate written notice to
 16 the affected person of the intent to remove or suspend; and

17 (c) any other cause the department determines to be so
 18 serious and compelling as to affect responsibility as a
 19 state contractor, including removal by another governmental
 20 entity for any cause listed in the department's rules; and

21 (d) failure to comply with the provisions of Title 39,
 22 chapter 51, or Title 39, chapter 71.

23 (4) The department shall issue a written decision to
 24 remove or suspend, stating the reasons for the action taken.
 25 A copy of the decision must be mailed or otherwise furnished

1 immediately to the person involved."

2 NEW SECTION. Section 27. Extension of authority. Any
3 existing authority of the department of labor and industry
4 to make rules on the subject of the provisions of this act
5 is extended to the provisions of this act.

6 NEW SECTION. Section 28. Repealer. Section
7 39-51-2206, MCA, is repealed.

8 NEW SECTION. Section 29. Codification instruction.
9 Section 25 is intended to be codified as an integral part of
10 Title 39, chapter 51, part 32, and the provisions of Title
11 39, chapter 51, apply to section 25.

12 NEW SECTION. Section 30. Effective date. This act is
13 effective ~~on-passage-and-approval~~ JULY 1, 1987.

-End-

1 HOUSE BILL NO. 143
 2 INTRODUCED BY HARPER, DONALDSON
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS ON UNEMPLOYMENT INSURANCE; ~~PROHIBITING--VENDORS~~
 7 ~~DELINQUENT-ON-UNEMPLOYMENT-OR-WORKERS'-COMPENSATION-PAYMENTS~~
 8 ~~FROM-BEING-INCLUDED-ON-THE-STATE'S-VENDOR-LIST~~ PROVIDING FOR
 9 REMOVAL OR SUSPENSION OF A PERSON FROM THE STATE VENDOR LIST
 10 FOR FAILURE TO COMPLY WITH THE UNEMPLOYMENT INSURANCE LAW OR
 11 THE WORKERS' COMPENSATION ACT; AMENDING SECTIONS 18-4-241,
 12 39-51-201, 39-51-203, 39-51-204, 39-51-407, 39-51-1101,
 13 39-51-1109, 39-51-1121, 39-51-1125, 39-51-1213, 39-51-1219,
 14 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2101, 39-51-2105,
 15 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2403, 39-51-2410,
 16 39-51-2501, 39-51-3105, 39-51-3202, AND 39-51-3206, MCA;
 17 REPEALING SECTION 39-51-2206, MCA; AND PROVIDING AN
 18 IMMEDIATE EFFECTIVE DATE."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 21 Section 1. Section 39-51-201, MCA, is amended to read:
 22 "39-51-201. General definitions. As used in this
 23 chapter, unless the context clearly requires otherwise, the
 24 following definitions apply:
 25 (1) "Annual payroll" means the total amount of wages

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

3 (2) "Base period" means the first four of the last
 4 five completed calendar quarters immediately preceding the
 5 first day of an individual's benefit year. However, in the
 6 case of a combined-wage claim pursuant to the arrangement
 7 approved by the secretary of labor of the United States, the
 8 base period shall be that applicable under the unemployment
 9 law of the paying state. For an individual who fails to
 10 meet the qualifications of 39-51-2105 due to a temporary
 11 total disability as defined in 39-71-116 or a similar
 12 statute of another state or the United States, the base
 13 period means the first four quarters of the last five
 14 quarters preceding the disability if a claim for
 15 unemployment benefits is filed within 24 months of the date
 16 on which the individual's disability was incurred.

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

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



1 previously filed new claim. A subsequent benefit year may
 2 not be established until the expiration of the current
 3 benefit year. However, in the case of a combined-wage claim
 4 pursuant to the arrangement approved by the secretary of
 5 labor of the United States, the base period is the period
 6 applicable under the unemployment law of the paying state.

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

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

12 (7) "Contributions" means the money payments to the
 13 state unemployment insurance fund required by this chapter
 14 but does not include assessments under 39-51-404(4).

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

17 (9) "Employing unit" means any individual or
 18 organization, including the state government, any of its
 19 political subdivisions 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-17--19367~~
 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 (10) "Employment office" means a free public employment
 15 office or branch thereof operated by this state or
 16 maintained as a part of a state-controlled system of public
 17 employment offices or such other free public employment
 18 offices operated and maintained by the United States
 19 government or its instrumentalities as the department may
 20 approve.

21 (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 (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 the employer.

7 (13) "Hospital" means an institution which has been
 8 licensed, certified, or approved by the state as a hospital.

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

6 (16) "Unemployment insurance administration fund" means
 7 the unemployment insurance administration fund established
 8 by this chapter from which administrative expenses under
 9 this chapter shall be paid.

10 (17) (a) "Wages" means all remuneration payable for
 11 personal services, including commissions and bonuses, the
 12 cash value of all remuneration payable in any medium other
 13 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, including the amount~~
 20 ~~paid by an employer for insurance or annuities or into a~~
 21 ~~fund to provide for such payment made after July 17, 1987, to~~
 22 ~~or on behalf of an employee or a dependent under a plan or~~
 23 ~~system established by an employer that makes provision for~~
 24 ~~the employee generally or for a class or classes of~~
 25 ~~employees or their dependents on account of~~ MADE BY THE

1 EMPLOYER, IF THE PAYMENT WAS MADE UNDER A PLAN ESTABLISHED
 2 FOR THE EMPLOYEES IN GENERAL OR FOR A SPECIFIC CLASS OR
 3 CLASSES OF EMPLOYEES, TO OR ON BEHALF OF THE EMPLOYEE FOR:

4 (A) retirement;

5 (B) sickness or accident disability, but in the case
 6 of payments made BY AN EMPLOYER DIRECTLY to an employee or
 7 dependent, this subsection (17)(b)(i)(B) includes from the
 8 term "wages" only payments that are received under a
 9 workers' compensation law, ONLY THOSE PAYMENTS MADE UNDER A
 10 WORKERS' COMPENSATION LAW ARE EXCLUDED FROM "WAGES";

11 (C) medical and hospitalization expenses in connection
 12 with sickness or accident disability; or

13 (D) death;

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

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

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

22 Section 2. Section 39-51-203, MCA, is amended to read:

23 "39-51-203. Employment defined. (1) "Employment",
 24 subject to other provisions of this section, means service
 25 by an individual or by an officer of a corporation,

1 including service in interstate commerce, performed for
 2 wages or under any contract of hire, written or oral,
 3 express or implied.

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

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

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

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

13 (B) the base of operations or place from which such
 14 service is directed or controlled is not in any state in
 15 which some part of the service is performed, but the
 16 individual's residence is in this state.

17 (b) Service is considered to be localized within a
 18 state if:

19 (i) the service is performed entirely within such
 20 state; or

21 (ii) the service is performed both within and without
 22 such state, but the service performed without such state is
 23 incidental to the individual's service within the state, for
 24 example, is temporary or transitory in nature or consists of
 25 isolated transactions.

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

12 (4) Service performed by an individual for wages is
 13 considered to be employment subject to this chapter unless
 14 and until it is shown to the satisfaction of the department
 15 that:

16 (a) such individual has been and will continue to be
 17 free from control or direction over the performance of such
 18 services, both under his the individual's contract and in
 19 fact;

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

25 (c) such individual is customarily engaged in an

1 independently established trade, occupation, profession, or
 2 business.

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

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

21 (7) (a) The term "employment" includes the service of
 22 an individual who is a citizen of the United States
 23 performed outside the United States, except in Canada, after
 24 ~~December--31--1971~~ in the employ of an American employer,
 25 other than service which is considered employment under the

1 provisions of subsection (2) of this section or the parallel
 2 provisions of another state's law, if:

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

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

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

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

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

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

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

23 (i) an individual who is a resident of the United
 24 States;

25 (ii) a partnership if two-thirds or more of the

1 partners are residents of the United States;

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

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

6 (8) Agricultural labor exempted under 39-51-204 is
 7 considered employment ~~subject--to--this--chapter--effective~~
 8 ~~January-17-1978~~, whenever the employing unit pays \$20,000 or
 9 more in cash to workers for agricultural labor in any
 10 quarter in the current or preceding calendar year or employs
 11 10 or more workers in agricultural labor on 20 days in 20
 12 different weeks during the current or preceding calendar
 13 year. If an employer is otherwise subject to the chapter
 14 and has agricultural employment, all employees are covered
 15 under the chapter regardless of the amount of money
 16 expended for agricultural purposes. WHEN THE OTHERWISE
 17 SUBJECT WAGES ARE PAID BY THE EMPLOYING UNIT FOR THE PURPOSE
 18 OF PROVIDING OUTFITTER AND GUIDE SERVICES, THE AGRICULTURAL
 19 WAGES ARE NOT COVERED.

20 (9) Domestic service exempted under 39-51-204(1)(b) is
 21 considered employment ~~subject--to--this--chapter--effective~~
 22 ~~January--17--1978~~, whenever the employing unit pays \$1,000 or
 23 more in cash for domestic service in any quarter during the
 24 current or preceding calendar year. If an employer is
 25 otherwise subject to the chapter and has domestic

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

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

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

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

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

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

15 (d) service performed by an individual in the employ
16 of his that individual's son, daughter, or spouse and
17 service performed by a child under the age of 21 in the
18 employ of his the child's father or mother;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (d)(c) in a facility conducted for the purpose of
 24 carrying out a program of rehabilitation for individuals
 25 whose earning capacity is impaired by age or physical or

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

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

11 {f}{e} for a state prison or other state correctional
 12 or custodial institution by an inmate of that institution."

13 Section 4. Section 39-51-407, MCA, is amended to read:

14 "39-51-407. Reimbursement of fund by state. {f} This
 15 state recognizes its obligation to replace, and hereby
 16 pledges the faith of this state that funds will be provided
 17 in the future and applied to the replacement of any of the
 18 money received ~~after July 17, 1947~~ from the United States or
 19 any agency thereof under Title III of the Social Security
 20 Act, any unencumbered balances in the unemployment insurance
 21 administration account ~~as of that date~~, any money thereafter
 22 granted to this state pursuant to the provisions of the
 23 Wagner-Peyser Act, and any money made available by the state
 24 or its political subdivisions and matched by such money
 25 granted to this state pursuant to the provisions of the

1 Wagner-Peyser Act which the secretary of labor finds have,
 2 because of any action or contingency, been lost or have been
 3 expended for purposes other than or in amounts in excess of
 4 those found necessary by the secretary of labor for the
 5 proper administration of this chapter. Such money shall be
 6 promptly supplied by money furnished by the state of Montana
 7 or any of its subdivisions for the use of the department and
 8 used only for purposes approved by the secretary of labor.
 9 The department shall, if necessary, promptly report to the
 10 governor and the governor to the legislature the amount
 11 required for such replacement.

12 {2} ~~This section shall not be construed to relieve~~
 13 ~~this state of its obligation with respect to funds received~~
 14 ~~prior to July 17, 1947 pursuant to the provisions of Title~~
 15 ~~III of the Social Security Act."~~

16 Section 5. Section 39-51-1101, MCA, is amended to
 17 read:

18 "39-51-1101. Commencement and termination of coverage
 19 under chapter. (1) Any employing unit which is or becomes an
 20 employer subject to this chapter within any calendar year
 21 shall be subject to this chapter during the whole of such
 22 calendar year, except that this subsection shall not apply
 23 to an employing unit electing coverage as provided for in
 24 39-51-1102.

25 (2) Except as otherwise provided in 39-51-1102, an

1 employing unit shall cease to be an employer subject to this
 2 chapter only as of January 1 of any calendar year only if it
 3 files with the department prior to the last day of February
 4 of such year a written application for termination of
 5 coverage and the department finds that the total wages
 6 payable for employment by said employer in the preceding
 7 calendar year did not exceed \$500 \$1,000. For the purpose of
 8 this subsection, the two or more employing units mentioned
 9 in subsection (2) or (3) of 39-51-202 shall be treated as a
 10 single employing unit."

11 Section 6. Section 39-51-1109, MCA, is amended to
 12 read:

13 "39-51-1109. Tax appeals. Any person aggrieved by any
 14 decision, determination, or redetermination of the
 15 department involving contribution liability, contribution
 16 rate, application for refund, or the charging of benefit
 17 payments to employers making payment in lieu of
 18 contributions is entitled to a review in accordance with
 19 Title 2, chapter 4, parts 6 and 7. Such decision,
 20 determination, or redetermination is final unless an
 21 interested party entitled to notice thereof applies for a
 22 review within 10 days after notification was mailed to the
 23 last known address, provided that the period may be extended
 24 for good cause."

25 Section 7. Section 39-51-1121, MCA, is amended to

1 read:

2 "39-51-1121. Definitions. As used in this part and
 3 part 12, the following definitions apply:

4 (1) "Computation date" means the reporting period
 5 ending September 30 preceding the calendar year for which a
 6 covered employer's contribution rate is effective.

7 (2) "Cutoff date" means December 31 immediately
 8 following the computation date. The department may extend
 9 the cutoff date in meritorious cases.

10 (3) "Deficit employer" means ~~a--covered-employer an~~
 11 employer who is subject under this chapter and who has
 12 established a record of accumulated benefits charged to his
 13 the employer's account in excess of his the employer's
 14 accumulated contributions paid as of the cutoff date and-has
 15 a-minus-experience-factor.

16 (4) "Department" means the department of labor and
 17 industry.

18 (5) "Eligible employer" means ~~a--covered--employer an~~
 19 employer who is HAS BEEN subject under this chapter for the
 20 3 years immediately preceding the computation date and who
 21 has:

22 (a) ~~paid--contributions--during--each--of--the--3--fiscal~~
 23 years--immediately--preceding--the--computation--date filed all
 24 contribution reports prescribed by the department;

25 (b) ~~with--respect--to--such--3--fiscal--years--filed--all~~

1 contribution-reports-prescribed-by-the-department paid all
 2 contributions and assessments under 39-51-404(4), and
 3 penalties and interest thereon;

4 (c) ~~paid all contributions due with respect to the~~
 5 ~~fiscal years before the cutoff date of the rate year~~
 6 established a record of accumulated contributions in excess
 7 of benefits charged to the employer's account; and

8 (d) ~~established a record of accumulated contributions~~
 9 ~~in excess of benefits charged to his account; and paid wages~~
 10 in at least 1 of the 8 calendar quarters preceding the
 11 computation date.

12 ~~(e) achieved a plus experience factor;~~

13 (6) "Fiscal year" means the four consecutive calendar
 14 quarters ending on September 30.

15 (7) "Governmental entities" means the state or any
 16 political subdivision of the state or an instrumentality of
 17 the state or a political subdivision, including any
 18 employing unit funded directly by tax levies.

19 (8) "Unrated employer" means ~~a covered employer who~~
 20 ~~has not paid contributions in each of the 3 fiscal years~~
 21 ~~immediately preceding the computation date or an employer~~
 22 ~~who has established a record of accumulated contributions in~~
 23 ~~excess of benefits charged to his account but has not filed~~
 24 ~~all required payroll reports or paid contributions by the~~
 25 ~~cutoff date for any of the quarters in the 3 fiscal years~~

1 immediately preceding the computation date an employer who
 2 is subject under this chapter and who does not meet all the
 3 criteria of an eligible or a deficit employer."

4 Section 8. Section 39-51-1125, MCA, is amended to
 5 read:

6 "39-51-1125. Computation of payments in lieu of
 7 contributions. (1) Qualified After June 30, 1987, qualified
 8 employers electing to make payments in lieu of contributions
 9 shall pay into the fund an amount equivalent to the full
 10 amount of regular benefits plus one-half of the amount the
 11 state's share of extended benefits paid to individuals based
 12 on wages paid by the employing unit. After December 31,
 13 1978, governmental entities shall pay the full amount of
 14 extended benefits.

15 (2) If benefits paid an individual are based on wages
 16 paid by both the employer and one or more other employers,
 17 the amount payable by any one employer to the fund bears the
 18 same ratio to total benefits paid to the individual as the
 19 base period wages paid to the individual by such employer
 20 bear to the total amount of base period wages paid to the
 21 individual by all his the individual's base period
 22 employers.

23 (3) If the base period wages of an individual include
 24 wages from more than one such employer, the amount to be
 25 paid into the fund with respect to the benefits paid to the

1 individual shall be prorated among the liable employers in
 2 proportion to the wages paid to the individual by each such
 3 employer during the base period.

4 (4) The amount of payment required from employers
 5 shall be ascertained by the department monthly and becomes
 6 due and payable by the employer quarterly as directed in
 7 this chapter. Penalty and interest for delinquency shall be
 8 assessed such employers as specified in 39-51-1301.

9 ~~(5) A nonprofit organization which elects to make
 10 payments in lieu of contributions into the unemployment
 11 insurance fund is not liable to make such payments with
 12 respect to the benefits paid to any individual whose base
 13 period wages include wages for previously uncovered
 14 services as defined in 39-51-204(3)(c), to the extent that
 15 the unemployment insurance fund is reimbursed for such
 16 benefits pursuant to section 121 of Public Law 94-566.~~

17 Section 9. Section 39-51-1213, MCA, is amended to
 18 read:

19 "39-51-1213. Classification of employers for
 20 experience rating purposes. (1) The department shall for
 21 each calendar year classify employers in accordance with
 22 their actual experience in the payment of contributions and
 23 with respect to benefits charged against their accounts,
 24 with contribution rates reflecting benefit experience. Each
 25 employer's rate for a calendar year shall be determined on

1 the basis of his the employer's record as of October 1 of
 2 the preceding calendar year.

3 (2) In making the classification, each eligible and
 4 deficit employer's contribution rate is determined in the
 5 manner set forth below:

6 (a) Each employer is given an "experience factor"
 7 which is contributions paid since October 1, 1981, minus
 8 benefits charged on each employer's account since October 1,
 9 1981, divided by his the employer's average annual taxable
 10 payroll rounded to the next lower dollar amount for the 3
 11 fiscal years immediately preceding the computation date. The
 12 computation of the "experience factor" shall be to six
 13 decimal places.

14 (b) Schedules shall be prepared listing all eligible
 15 and deficit employers in inverse numerical order of their
 16 experience factors. There shall be listed on such schedules
 17 for each employer in addition to the experience factor:

18 (i) the amount of his the employer's taxable payroll
 19 for the fiscal year ending on the computation date; and

20 (ii) the cumulative total consisting of the sum of the
 21 employer's taxable payroll for the fiscal year ending on the
 22 computation date and the corresponding taxable payrolls for
 23 all other employers preceding him that employer on the
 24 schedules.

25 (3) The cumulative taxable payroll amounts listed on

1 the schedules provided for in 39-51-1218 shall be segregated
 2 into groups that will yield approximately the average tax
 3 rate according to the tax schedule assigned for that
 4 particular taxable year. Each group shall be identified by
 5 the rate class number listed in the table which represents
 6 the percentage limits of each group. Each employer on the
 7 schedules is assigned that contribution rate opposite his
 8 that employer's rate class for the tax schedule in effect
 9 for the taxable year.

10 (4) (a) If the grouping of rate classes requires the
 11 inclusion of exactly one-half of an employer's taxable
 12 payroll, the employer is assigned the lower of the two rates
 13 designated for the two classes in which the halves of his
 14 that employer's taxable payroll are so required.

15 (b) If the group of rate classes requires the
 16 inclusion of a portion other than exactly one-half of an
 17 employer's taxable payroll, the employer is assigned the
 18 rate designated for the class in which the greater part of
 19 his that employer's taxable payroll is so required.

20 (c) If one or more employers on the schedules have
 21 experience factors identical to that of the last employer
 22 included in a particular rate class, all such employers are
 23 included in and assigned the contribution rate specified for
 24 such class, notwithstanding the provisions of 39-51-1214.

25 (5) If the taxable payroll amount or the experience

1 factor or both such taxable payroll amount and experience
 2 factor of any eligible or deficit employer listed on the
 3 schedules is changed, the employer is placed in that
 4 position on the schedules which he the employer would have
 5 occupied had his that employer's taxable payroll amount or
 6 experience factor as changed been used in determining his
 7 that employer's position in the first instance, but such
 8 change does not affect the position or rate classification
 9 of any other employer listed on the schedules and does not
 10 affect the rate determination for previous years.

11 (6) Deficit employers who have not filed all required
 12 payroll reports or paid all contributions due by the cutoff
 13 date must be assigned the maximum contribution rate in
 14 effect for the taxable year."

15 Section 10. Section 39-51-1219, MCA, is amended to
 16 read:

17 "39-51-1219. Procedures for the substitution, merger,
 18 or acquisition of an employer account by a successor
 19 employing unit. (1) Subject to the provisions of subsection
 20 (3), whenever any individual or organization (whether or not
 21 a covered employer) in any manner succeeds to or acquires
 22 all or substantially all of the business of an employer who
 23 at the time of acquisition was a covered employer and
 24 whenever in respect to whom the department finds that the
 25 business of the predecessor is continued solely by the

1 successor:

2 (a) the separate account and the actual contribution,
 3 benefit, and taxable payroll experience of the predecessor
 4 shall, upon the joint application of the predecessor and the
 5 successor within 90 days after such acquisition and approval
 6 by the department, be transferred to the successor employer
 7 for the purpose of determining the successor's liability and
 8 rate of contribution; and

9 (b) any successor who was not an employer on the date
 10 of acquisition becomes a covered employer as of such date.

11 (2) Whenever any individual or organization (whether
 12 or not a covered employer) in any manner succeeds to or
 13 acquires part of the business of an employer who at the time
 14 of acquisition was a covered employer and whenever such
 15 portion of the business is continued by the successor:

16 (a) so much of the separate account and the actual
 17 contribution, benefit, and taxable payroll experience of the
 18 predecessor as is attributable to the portion of the
 19 business transferred, as determined on a pro rata basis in
 20 the same ratio that the wages of covered employees properly
 21 allocable to the transferred portion of the business bears
 22 to the payroll of the predecessor in the last four completed
 23 calendar quarters immediately preceding the date of
 24 transfer, shall, upon the joint application of the
 25 predecessor and the successor within 90 days after such

1 acquisition and approval by the department, be transferred
 2 to the successor employer for the purpose of determining the
 3 successor's liability and rate of contribution; and

4 (b) any successor who was not an employer on the date
 5 of acquisition becomes a covered employer as of such date.

6 (3) (a) The 90-day period may be extended at the
 7 discretion of the department.

8 (b) Whenever a predecessor covered employer has a
 9 deficit experience rating account as of the last computation
 10 date, the transfer provided for in subsections (1) and (2)
 11 is mandatory except when it is shown by substantial evidence
 12 that neither the management, or ownership, or nor both the
 13 management and ownership are not substantially the same for
 14 the successor as for the predecessor, in which case the
 15 successor shall begin with the rate of a new employer.
 16 Whenever such mandatory transfer involves only a portion of
 17 the experience rating record and the predecessor or
 18 successor employers fail to supply the required payroll
 19 information within 10 days after notice, the transfer shall
 20 be based on estimates of the applicable payrolls.

21 (4) (a) If the successor was a covered employer prior
 22 to the date of the acquisition of all or a part of the
 23 predecessor's business, his the successor's rate of
 24 contribution, effective the first day of the calendar year
 25 immediately following the date of acquisition, is based on

1 the combined experience of the predecessor and successor.

2 (b) If the successor was not a covered employer prior
3 to the date of the acquisition of all or a part of the
4 predecessor's business, his the successor's rate is the rate
5 applicable to the predecessor with respect to the period
6 immediately preceding the date of acquisition, but if there
7 was more than one predecessor, the successor's rate shall be
8 a newly computed rate based on the combined experience of
9 the predecessors, becoming effective immediately after the
10 date of acquisition and remaining in effect for the balance
11 of the rate year."

12 Section 11. Section 39-51-1301, MCA, is amended to
13 read:

14 "39-51-1301. (Temporary) Penalty and interest on
15 past-due contributions. (1) Contributions unpaid on the date
16 on which they are due and payable, as provided by
17 subsections (1) and (2) of 39-51-1103 and 39-51-1125, that
18 are paid within--20--days--after by the end of the month
19 following the due date shall be subject to a penalty
20 assessment of \$10 or 10% of the contribution due, whichever
21 is greater. If the contributions are not paid within--20
22 days--after by the end of the month following the due date,
23 the employer shall be subject to a penalty assessment of \$15
24 or 15% of the contributions due, whichever is greater. All
25 past-due contributions shall bear interest at the rate of

1 18% a year, to be prorated on a daily basis.

2 (2) A penalty of \$40 shall be assessed whenever, as
3 the result of a willful refusal of an employer to furnish
4 wage information or pay contributions on time, the
5 department issues a subpoena to obtain wage information or
6 makes a summary or jeopardy assessment pursuant to
7 39-51-1302.

8 (3) There is an account in the federal special revenue
9 fund. Penalties and interest collected under this section
10 must be deposited in that account. Money deposited in that
11 account and appropriated to the department must be used by
12 the department to administer this chapter and for programs
13 to train and retrain unemployed and underemployed persons.
14 Money in the account not appropriated for these purposes
15 must be transferred by the department to the unemployment
16 insurance trust fund at the end of each fiscal year.

17 (4) When failure to pay contributions on time was not
18 caused by willful intent of the employer, the department may
19 abate the penalty and interest.

20 (5) All money accruing to the unemployment insurance
21 trust fund from interest and penalties collected on past-due
22 contributions must be used solely for the payment of
23 unemployment insurance benefits and may not be used for any
24 other purpose.

25 39-51-1301. (Effective July 1, 1989) Penalty and

1 interest on past-due contributions. (1) Contributions unpaid
 2 on the date on which they are due and payable, as provided
 3 by subsections (1) and (2) of 39-51-1103 and 39-51-1125,
 4 that are paid ~~within-20-days-after~~ by the end of the month
 5 following the due date shall be subject to a penalty
 6 assessment of \$10 or 10% of the contribution due, whichever
 7 is greater. If the contributions are not paid ~~within--20~~
 8 ~~days--after~~ by the end of the month following the due date,
 9 the employer shall be subject to a penalty assessment of \$15
 10 or 15% of the contributions due, whichever is greater. All
 11 past-due contributions shall bear interest at the rate of
 12 18% a year, to be prorated on a daily basis.

13 (2) A penalty of \$40 shall be assessed whenever, as
 14 the result of a willful refusal of an employer to furnish
 15 wage information or pay contributions on time, the
 16 department issues a subpoena to obtain wage information or
 17 makes a summary or jeopardy assessment pursuant to
 18 39-51-1302.

19 (3) Interest and penalties collected pursuant to this
 20 section shall be paid into the unemployment insurance trust
 21 fund.

22 (4) When failure to pay contributions on time was not
 23 caused by willful intent of the employer, the department may
 24 abate the penalty and interest.

25 (5) All money accruing to the unemployment insurance

1 trust fund from interest and penalties collected on past-due
 2 contributions must be used solely for the payment of
 3 unemployment insurance benefits and may not be used for any
 4 other purpose."

5 Section 12. Section 39-51-1303, MCA, is amended to
 6 read:

7 "39-51-1303. Collection of unpaid contributions by
 8 civil action. (1) If, after due notice, any employer
 9 defaults in any payment of contributions or interest
 10 thereon, the department may ~~in~~ at its discretion initiate a
 11 civil action in the name of the Montana department of labor
 12 and industry to collect the amount due, and the employer
 13 adjudged in default shall pay the costs of such action. The
 14 venue--for--such--action--may--in--the--discretion--of--the
 15 department--be-in-Lewis-and-Clark-County;

16 (2) An action for the collection of contributions due
 17 must be brought within 5 years after the due date of such
 18 contributions or it is barred.

19 (3) The department may pursue its remedy under either
 20 this section or 39-51-1304, or both."

21 Section 13. Section 39-51-1304, MCA, is amended to
 22 read:

23 "39-51-1304. Lien for payment of unpaid contributions
 24 and assessments -- levy and execution. Unpaid contributions
 25 and assessments under 39-51-404(4), including penalties and

1 interest assessed thereon, have the effect of a judgment
 2 against the employer, arising at the time the ~~contributions~~
 3 such payments are due. The department may issue a
 4 certificate of lien setting forth the amount of
 5 ~~contributions--due--and--accrued--interest~~ payments due and
 6 directing the clerk of the district court of any county of
 7 the state to enter the certificate as a judgment in the
 8 docket pursuant to 25-9-301. From the time the judgment is
 9 docketed, it becomes a lien upon all real and personal
 10 property of the employer. FROM THE TIME THE JUDGMENT IS
 11 FILED WITH THE SECRETARY OF STATE OR A REGISTRAR OF PERSONAL
 12 PROPERTY SPECIFICALLY DESCRIBING THE PERSONAL PROPERTY, IT
 13 BECOMES A LIEN UPON PERSONAL PROPERTY OF THE EMPLOYER. After
 14 the due process requirements of 39-51-1109 and 39-51-2403
 15 have been satisfied, the department may enforce the judgment
 16 pursuant to Title 25, chapter 13, except that the department
 17 may enforce the judgment at any time within 10 years of the
 18 creation of the lien."

19 Section 14. Section 39-51-2101, MCA, is amended to
 20 read:

21 "39-51-2101. Total unemployment -- when. An individual
 22 shall be deemed totally unemployed in any week during which
 23 he the individual performed no work and earned no wages or a
 24 week of less than full-time work with wages of less than 2
 25 times his the individual's weekly benefit amount. No

1 ~~individual--is--unemployed--in--any--week--that--he--is~~
 2 ~~self-employed."~~

3 Section 15. Section 39-51-2105, MCA, is amended to
 4 read:

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

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

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

20 ~~{a}~~ ~~which--were--not--employment--as--defined--in~~
 21 ~~39-51-204{1}{a}~~ ~~and--{1}{b}~~ ~~at--any--time--during--the--1-year~~
 22 ~~period--ending--December--31--1975,~~ ~~and~~

23 ~~{b}~~ ~~which:~~

24 ~~{i}~~ ~~are--agricultural--labor,~~ ~~as--defined--in~~
 25 ~~39-51-203{8},~~ ~~or--domestic--service,~~ ~~as--defined--in~~

1 39-51-203(9); or
 2 (ii) are services performed by an employee of this
 3 state or a political subdivision thereof, as provided in
 4 39-51-203(5) or by an employee of a nonprofit educational
 5 institution which is not an institution of higher education,
 6 as provided in 39-51-203(6), except to the extent that
 7 assistance under Title I of the Emergency Jobs and
 8 Unemployment Assistance Act of 1974 was paid on the basis of
 9 such services."

10 Section 16. Section 39-51-2303, MCA, is amended to
 11 read:

12 "39-51-2303. Disqualification for discharge due to
 13 misconduct. An individual shall be disqualified for benefits
 14 if he has been after being discharged:

15 (1) for misconduct connected with his the individual's
 16 work or affecting his the individual's employment until an
 17 the individual has performed services, other than
 18 self-employment, for which remuneration is received equal to
 19 or in excess of eight times his the individual's weekly
 20 benefit amount subsequent to the week in which the act
 21 causing the disqualification occurred.

22 (2) for gross misconduct connected with his the
 23 individual's work or committed on the employer's premises,
 24 as determined by the department, for a period of ~~12~~
 25 52 weeks."

1 Section 17. Section 39-51-2304, MCA, is amended to
 2 read:

3 "39-51-2304. Disqualification for failure to apply for
 4 or to accept suitable work. (1) ~~Effective April 17, 1977, an~~
 5 An individual is disqualified for benefits if he the
 6 individual fails without good cause either to apply for
 7 available and suitable work when so directed by the
 8 employment office or the department or to accept an offer of
 9 suitable work ~~offered to him~~ which he the individual is
 10 physically able and mentally qualified to perform or to
 11 return to his customary self-employment, if any, when so
 12 directed by the department. Such disqualification continues
 13 for the week in which such failure occurs and until the
 14 individual has performed services, other than
 15 self-employment, for which remuneration is received equal to
 16 or in excess of his six times that individual's weekly
 17 benefit amount ~~in 6 separate weeks~~ subsequent to the date
 18 the act causing the disqualification occurred, with 6 weeks'
 19 reduction in benefit duration, as determined by the
 20 department, provided he the individual has not left this
 21 work under disqualifying circumstances.

22 (2) In determining whether or not any work is suitable
 23 for an individual, the department shall consider:

24 (A) the degree of risk involved to his the
 25 individual's health, safety, and morals; his

1 (B) the individual's physical fitness and prior
2 training; his

3 (C) THE INDIVIDUAL'S experience and previous
4 earnings; his

5 (D) THE INDIVIDUAL'S length of unemployment and
6 prospects for securing local work in his the customary
7 occupation; and

8 (E) the distance of the available work from his the
9 individual's residence.

10 (3) Notwithstanding any other provisions of this
11 chapter, including subsection (4), no work may be considered
12 suitable and benefits may not be denied under this chapter
13 to any otherwise eligible individual for refusing to accept
14 new work under any of the following conditions:

15 (a) if the position offered is vacant due directly to
16 a strike, lockout, or other labor dispute;

17 (b) if the wages, hours, or other conditions of the
18 work offered are substantially less favorable to the
19 individual than those prevailing for similar work in the
20 locality;

21 (c) if, as a condition of being employed, the
22 individual would be required to join a company union or to
23 resign from or refrain from joining any bona fide labor
24 organization.

25 (4) Subject to subsection (3), after 13 weeks of

1 unemployment, suitable work is work that meets the criteria
2 in this section and that offers 75% of the individual's
3 earnings in his previous insured work in his the
4 individual's customary occupation. No individual, however,
5 is required to accept a job paying less than the federal
6 minimum wage."

7 Section 18. Section 39-51-2402, MCA, is amended to
8 read:

9 "39-51-2402. Initial determination -- redetermination.

10 (1) A representative designated by the department and
11 hereinafter referred to as a deputy shall promptly examine
12 the claim and, on the basis of the facts found by him the
13 deputy, shall either determine whether or not such claim is
14 valid and, if valid, the week with respect to which benefits
15 shall commence, the weekly benefit amount payable, and the
16 maximum duration thereof or shall refer such claim or any
17 question involved therein to an appeals referee who shall
18 make his the decision with respect thereto in accordance
19 with the procedure prescribed in 39-51-2403. The deputy
20 shall promptly notify the claimant and any other interested
21 party of the decision and the reasons therefor.

22 (2) The deputy may for good cause reconsider his the
23 decision and shall promptly notify the claimant and such
24 other interested parties of his the amended decision and the
25 reasons therefor.

1 (3) No determination or redetermination of an initial
 2 or additional claim shall be made under this section unless
 3 5 days' notice of the time and place of the claimant's
 4 interview for examination of the claim is mailed to each
 5 interested party.

6 (4) A determination or redetermination shall be deemed
 7 final unless an interested party entitled to notice thereof
 8 applies for reconsideration of the determination or appeals
 9 therefrom within ~~5 days after delivery of such notification~~
 10 ~~or within 7~~ 10 days after such notification was mailed to
 11 ~~his~~ the interested party's last known address, provided that
 12 such period may be extended for good cause."

13 Section 19. Section 39-51-2403, MCA, is amended to
 14 read:

15 "39-51-2403. Decision of appeals referee. After a
 16 hearing, an appeals referee shall make findings and
 17 conclusions promptly and on the basis thereof affirm,
 18 modify, or reverse the deputy's determination or
 19 redetermination. Each interested party shall be furnished
 20 promptly a copy of the decision and the supporting findings
 21 and conclusions. This decision shall be final unless
 22 further review is initiated pursuant to 39-51-2404 within 5
 23 ~~days after delivery of such notification or within 7~~ 10 days
 24 after such notification was mailed to his the interested
 25 party's last known address, provided that such period may be

1 extended for good cause."

2 Section 20. Section 39-51-2410, MCA, is amended to
 3 read:

4 "39-51-2410. Finality of board's decision -- judicial
 5 review. (1) Any decision of the board in the absence of an
 6 appeal therefrom as herein provided shall become final 30
 7 days after the date of notification or mailing thereof
 8 ~~except in the case of the department when such decision~~
 9 ~~becomes final 20 days following the board's decision,~~ and
 10 judicial review thereof shall be permitted only after any
 11 party claiming to be aggrieved thereby has exhausted his all
 12 remedies before the board. ~~The department shall be deemed~~
 13 ~~to be a party to any judicial action involving any such~~
 14 ~~decision and may be represented in any such action by an~~
 15 ~~attorney employed by the department or at the department's~~
 16 ~~request, by the attorney general.~~ THE DEPARTMENT IS DEEMED
 17 TO BE A PARTY TO ANY JUDICIAL ACTION INVOLVING ANY SUCH
 18 DECISION AND MAY BE REPRESENTED IN ANY SUCH ACTION BY AN
 19 ATTORNEY EMPLOYED BY THE DEPARTMENT OR, AT THE DEPARTMENT'S
 20 REQUEST, BY THE ATTORNEY GENERAL.

21 (2) Within 30 days after the date of notification or
 22 mailing of the decision of the board, any party aggrieved
 23 thereby may secure judicial review thereof by commencing an
 24 action in the district court of the county in which said
 25 party resides and in which action any other party to the

1 proceeding before the board shall be made a defendant. In
 2 such action a petition, which need not be verified but which
 3 shall state the grounds upon which a review is sought, shall
 4 be served upon the commissioner of labor and industry and
 5 all other interested parties in the manner provided in the
 6 Montana Rules of Civil Procedure.

7 (3) ~~With--its-answer,--the~~ The department shall certify
 8 and file with said court all documents and papers and a
 9 transcript record of all testimony taken in the matter,
 10 together with the board's findings of fact and decision.
 11 The board may also in its discretion certify to such court
 12 questions of law involved in any decision by it.

13 (4) Whenever the department seeks review of a decision
 14 of the board, all interested parties shall be served with a
 15 copy of its petition together with all documents filed with
 16 the court.

17 (5) In any judicial proceeding under 39-51-2406
 18 through 39-51-2410, the findings of the board as to the
 19 facts, if supported by evidence and in the absence of fraud,
 20 shall be conclusive and the jurisdiction of said court shall
 21 be confined to questions of law. Such action and the
 22 questions so certified shall be heard in a summary manner
 23 and shall be given precedence over all other civil cases
 24 ~~except--cases-arising-under-the-workers'-compensation-law-of~~
 25 ~~this--state~~ EXCEPT CASES ARISING UNDER THE WORKERS'

1 COMPENSATION LAW OF THIS STATE.

2 (6) An appeal may be taken from the decision of the
 3 district court to the supreme court of Montana in the same
 4 manner, but not inconsistent with the provisions of this
 5 chapter, as is provided in civil cases. It shall not be
 6 necessary in any judicial proceeding under this section to
 7 enter exceptions to the rulings of the board and no bond
 8 shall be required for entering such appeal. Upon the final
 9 determination of such judicial proceeding, the department
 10 shall enter an order in accordance with such determination."

11 Section 21. Section 39-51-2501, MCA, is amended to
 12 read:

13 "39-51-2501. Definitions. As used in this part, unless
 14 the context clearly requires otherwise, the following
 15 definitions apply:

16 (1) "Extended benefit period" means a period which:

17 (a) begins with the third week after a week for which
 18 there is a state "on" indicator, provided that no extended
 19 benefit period may begin by reason of a state "on" indicator
 20 before the 14th week following the end of a prior extended
 21 benefit period which was in effect with respect to this
 22 state; and

23 (b) ends with the third week after the first week for
 24 which there is a state "off" indicator or the 13th
 25 consecutive week of such period.

1 (2) (a) "Rate of insured unemployment", for purposes
 2 of 39-51-2504 and 39-51-2505, means the percentage derived
 3 by dividing the average weekly number of individuals filing
 4 claims for regular benefits in this state for weeks of
 5 unemployment with respect to the most recent
 6 13-consecutive-week period, as determined by the department
 7 on the basis of its reports to the U.S. secretary of labor,
 8 by the average monthly employment covered under this chapter
 9 for the first 4 of the most recent 6 completed calendar
 10 quarters ending before the end of such 13-week period.

11 (b) Computations required by the provisions of
 12 subsection (2)(a) shall be made by the department in
 13 accordance with regulations prescribed by the U.S. secretary
 14 of labor.

15 (3) "Regular benefits" means benefits payable to an
 16 individual under this chapter or under any other state law,
 17 including benefits payable to federal civilian employees and
 18 to ex-servicemen ex-service personnel pursuant to 5 U.S.C.
 19 chapter 85, other than extended benefits.

20 (4) "Extended benefits" means benefits, including
 21 benefits payable to federal civilian employees and to
 22 ex-servicemen ex-service personnel pursuant to 5 U.S.C.
 23 chapter 85, payable to an individual under the provisions of
 24 this part for weeks of unemployment in his the individual's
 25 eligibility period.

1 (5) "Eligibility period", ~~of-an-individual~~ relating to
 2 extended benefits, means the period consisting of the weeks
 3 in ~~his~~ the individual's benefit year which begin in an
 4 extended benefit period and, if ~~his~~ the individual's benefit
 5 year ends within such extended benefit period, any weeks
 6 thereafter which begin in such period.

7 (6) "Exhaustee" means an individual who, with respect
 8 to any week of unemployment in ~~his~~ the eligibility period:

9 (a) has received, prior to such week, all of the
 10 regular benefits that were available ~~to--him~~ under this
 11 chapter or any other state law, including dependents'
 12 allowances and benefits payable to federal civilian
 13 employees and ex-servicemen ex-service personnel under 5
 14 U.S.C. chapter 85, in ~~his~~ the current benefit year that
 15 includes such week; provided that, for the purposes of this
 16 subsection, an individual shall be deemed to have received
 17 all of the regular benefits that were available ~~to-him~~
 18 although, as a result of a pending appeal with respect to
 19 wages that were not considered in the original monetary
 20 determination ~~in-his~~ of the benefit year, ~~he~~ the individual
 21 may subsequently be determined to be entitled to added
 22 regular benefits;

23 (b) ~~his~~ the benefit year having expired prior to such
 24 week, has no or insufficient wages on the basis of which he
 25 the individual could establish a new benefit year that would

1 include such week;

2 (c) has no right to unemployment benefits or
3 allowances, as the case may be, under the Railroad
4 Unemployment Insurance Act, ~~the Trade Expansion Act of 1962,~~
5 ~~the Automotive Products Trade Act of 1965,~~ and such other
6 federal laws as are specified in regulations issued by the
7 U.S. secretary of labor; and

8 (d) has not received and is not seeking unemployment
9 benefits under the unemployment compensation law of Canada,
10 but if ~~he~~ the individual is seeking such benefits and the
11 appropriate agency finally determines that ~~he~~ the individual
12 is not entitled to benefits under such law, ~~he~~ the
13 individual is considered an exhaustee.

14 (7) "State law" means the unemployment insurance law
15 of any state approved by the U.S. secretary of labor under
16 section 3304 of the Internal Revenue Code of 1954."

17 Section 22. Section 39-51-3105, MCA, is amended to
18 read:

19 "39-51-3105. Assignment, pledge, or encumbrance of
20 right to benefits void -- benefits exempt from levy,
21 execution, attachment, or other remedy for collection of
22 debt -- exception. Any assignment, pledge, or encumbrance of
23 any right to benefits which are or may become due or payable
24 under this chapter shall be void, and such rights to
25 benefits shall be exempt from levy, execution, attachment,

1 or any other remedy whatsoever provided for the collection
2 of debt, and benefits received by any individual, so long as
3 they are not mingled with other funds of the recipient,
4 shall be exempt from any remedy whatsoever for the
5 collection of all debts except ~~debts--incurred--for~~
6 ~~necessaries--furnished--to--such--individual--or--his--spouse--or~~
7 ~~dependents---during---the--time--when--such--individual--was~~
8 unemployed as provided in 39-51-3106. Any waiver of any
9 exemption provided for in this section shall be void."

10 Section 23. Section 39-51-3202, MCA, is amended to
11 read:

12 "39-51-3202. Making false statement or representation
13 or failing to disclose material fact in order to obtain or
14 increase benefits -- criminal penalty. (1) A person who, in
15 order to obtain or increase for himself personal gain or for
16 any other person benefits under this chapter or under an
17 employment security law of any other state or territory or
18 the federal government, knowingly makes a false statement or
19 representation or knowingly fails to disclose a material
20 fact is guilty of a crime under 45-7-203, and the department
21 may cause criminal proceedings to be initiated against him
22 the person.

23 (2) A person will be required to repay to the
24 department an amount as determined by 39-51-3201(2).

25 (3) For purposes of this section, restitution awarded

1 under this section must include a sum equal to the amount
 2 wrongfully received plus 18% interest a year notwithstanding
 3 the provisions of 25-9-205."

4 Section 24. Section 39-51-3206, MCA, is amended to
 5 read:

6 "39-51-3206. ~~Liability for wrongful or improper~~
 7 ~~receipt of benefits~~ Collection of benefit overpayments. Any
 8 ~~person who, by reason of the nondisclosure or~~
 9 ~~misrepresentation by him or by another of a material fact,~~
 10 ~~irrespective of whether such nondisclosure or~~
 11 ~~misrepresentation was known or fraudulent, has received any~~
 12 ~~sum as benefits under this chapter while any conditions for~~
 13 ~~the receipt of benefits imposed by this chapter were not~~
 14 ~~fulfilled in his case or while he was disqualified from~~
 15 ~~receiving benefits shall, in the discretion of the~~
 16 ~~department, either be liable to have such sum deducted from~~
 17 ~~any future benefits payable to him under this chapter or~~
 18 ~~shall be liable to repay to the department for the~~
 19 ~~unemployment insurance fund a sum equal to the amount so~~
 20 ~~received by him, and such sum shall be collectible in the~~
 21 ~~manner provided in this chapter for the collection of past~~
 22 ~~due contributions. An action for collection of overpaid~~
 23 ~~benefits must be brought within 5 years after the date of~~
 24 ~~such overpayment or it is barred. A person who receives~~
 25 benefits not authorized by this chapter shall repay to the

1 department either directly or, as authorized by the
 2 department, by offset of future benefits to which the
 3 claimant may be entitled, or by a combination of both
 4 methods, a sum equal to the amount of the overpayment. The
 5 sum is collectible in the manner provided in this chapter
 6 for the collection of past due contributions unless the
 7 department finds that the benefits were received through no
 8 fault of the person and the recovery of the benefits would
 9 be against equity and good conscience. An action for
 10 collection of overpaid benefits must be brought within 5
 11 years after the date of the overpayment. Notwithstanding any
 12 other provision of this chapter, the department may recover
 13 an overpayment of benefits paid to any individual under this
 14 state or another state law or under an unemployment benefit
 15 program of the United States."

16 NEW SECTION. Section 25. Authority to determine
 17 uncollectibility of debts -- transfer of debts for
 18 collection -- liability for payment of fees and costs of
 19 collection. (1) After making all reasonable efforts to
 20 collect unpaid contribution CONTRIBUTIONS, assessments under
 21 39-51-404(4), and penalties and interest thereon, or
 22 overpaid benefits under 39-51-3206 and interest thereon, the
 23 department may determine a debt to be uncollectible. Upon
 24 determining that a debt is uncollectible, the department may
 25 transfer the debt to the department of revenue for

1 collection as provided in 17-4-104.

2 (2) Subject to approval by the department, reasonable
 3 fees or costs of collection incurred by the department of
 4 revenue may be added to the amount of the debt, including
 5 added fees or costs. The debtor is liable for repayment of
 6 the amount of the debt, plus fees or costs added pursuant to
 7 this subsection. All money collected must be returned to the
 8 department to be applied to the debt, except that all fees
 9 or costs collected must be retained by the department of
 10 revenue. If less than the full amount of the debt is
 11 collected, the department of revenue shall retain only a
 12 proportionate share of the collection fees or costs.

13 Section 26. Section 18-4-241, MCA, is amended to read:

14 "18-4-241. Authority to remove or suspend from
 15 vendors' list. (1) The department may remove a person for
 16 cause from consideration for award of contracts. The removal
 17 may not be for a period of more than 3 years.

18 (2) The department may suspend a person from
 19 consideration for award of contracts if there is probable
 20 cause to believe that the person has engaged in activities
 21 that may lead to removal. The suspension may not be for a
 22 period exceeding 3 months unless an indictment has been
 23 issued for an offense that would be a cause for removal
 24 under subsection (3), in which case the suspension must, at
 25 the request of the attorney general, remain in effect until

1 after the trial of the suspended person. The authority to
 2 remove or suspend must be exercised in accordance with rules
 3 adopted by the department.

4 (3) The causes for removal or suspension include the
 5 following:

6 (a) violation of contract provisions, as set forth in
 7 (i) and (ii) of this subsection, of a character which is
 8 regarded by the department to be so serious as to justify
 9 removal action:

10 (i) deliberate failure without good cause to perform
 11 in accordance with the specifications or within the time
 12 limit provided in the contract; or

13 (ii) a recent record of failure to perform or of
 14 unsatisfactory performance in accordance with the terms of
 15 one or more contracts, provided that failure to perform or
 16 unsatisfactory performance caused by acts beyond the control
 17 of the contractor may not be considered to be a basis for
 18 removal;

19 (b) failure to respond to a number of solicitations
 20 over a period of time as determined by the department in
 21 accordance with rules, and after adequate written notice to
 22 the affected person of the intent to remove or suspend; and

23 (c) any other cause the department determines to be so
 24 serious and compelling as to affect responsibility as a
 25 state contractor, including removal by another governmental

1 entity for any cause listed in the department's rules; and
2 (d) failure to comply with the provisions of Title 39,
3 chapter 51, or Title 39, chapter 71.

4 (4) The department shall issue a written decision to
5 remove or suspend, stating the reasons for the action taken.
6 A copy of the decision must be mailed or otherwise furnished
7 immediately to the person involved."

8 NEW SECTION. Section 27. Extension of authority. Any
9 existing authority of the department of labor and industry
10 to make rules on the subject of the provisions of this act
11 is extended to the provisions of this act.

12 NEW SECTION. Section 28. Repealer. Section
13 39-51-2206, MCA, is repealed.

14 NEW SECTION. Section 29. Codification instruction.
15 Section 25 is intended to be codified as an integral part of
16 Title 39, chapter 51, part 32, and the provisions of Title
17 39, chapter 51, apply to section 25.

18 NEW SECTION. Section 30. Effective date. This act is
19 effective ~~on passage and approval~~ JULY 1, 1987.

-End-

COMMITTEE OF THE WHOLE AMENDMENT

3-11-87

DATE

3:15

TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill No. 143

third reading copy (blue) as follows:
Color

1. Page 12, line 13.

Following: "agricultural purposes."

Insert: "When the otherwise subject wages are paid by the employing unit for the purpose of providing outfitter and guide services, the agricultural wages are not covered."

ADOPT

REJECT

Les Herick

Senator Herick

STANDING COMMITTEE REPORT

SENATE

March 5,

87
19.....

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE BILL No. 143

third reading copy (blue)
color

HARPER (BLAYLOCK)

GENERAL REVISION OF UNEMPLOYMENT INSURANCE LAW

Respectfully report as follows: That HOUSE BILL No. 143

be amended as follows:

1. Title, lines 6 through 8.

Following: ";"

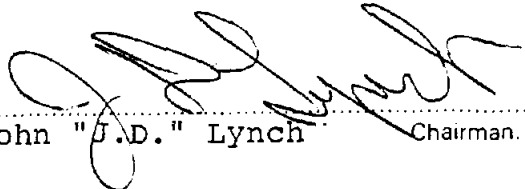
Strike: remainder of lines 6 through "LIST" on line 8

Insert: "PROVIDING FOR REMOVAL OR SUSPENSION OF A PERSON
FROM THE STATE VENDOR LIST FOR FAILURE TO COMPLY WITH THE
UNEMPLOYMENT INSURANCE LAW OR THE WORKERS' COMPENSATION ACT"

AND AS AMENDED,
BE CONCURRED IN

~~OKKASS~~

~~OKKOKASSX~~ *KMF*


Sen. John "J.D." Lynch Chairman.