

SB 34 INTRODUCED BY HARDING, SMITH, E., SEVERSON, ET AL.
EXEMPT SALARIED OFFICERS, OWNERS, AND DIRECTORS FROM
UNEMPLOYMENT INSURANCE

1/05	INTRODUCED		
1/05	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/05	FISCAL NOTE REQUESTED		
1/08	SPONSORS ADDED		
1/08	FISCAL NOTE RECEIVED		
1/08	HEARING		
2/12	SPONSOR FISCAL NOTE REQUESTED		
2/17	SPONSOR FISCAL NOTE RECEIVED		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	39	9
2/23	3RD READING PASSED	43	5
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO BUSINESS & LABOR		
3/11	HEARING		
3/26	COMMITTEE REPORT--BILL CONCURRED		
3/28	2ND READING NOT CONCURRED	54	29
3/28	RETURNED TO SENATE NOT CONCURRED		

1 SENATE BILL NO. 34
2 INTRODUCED BY HARDING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE
5 UNEMPLOYMENT INSURANCE LAW SALARIED OFFICERS AND DIRECTORS
6 OF CORPORATIONS AND SALARIED OWNERS AND OFFICERS OF
7 PARTNERSHIPS, ASSOCIATIONS, AND SOLE PROPRIETORSHIPS; AND
8 AMENDING SECTIONS 39-51-203 AND 39-51-204, MCA."

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

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

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

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

24 (A) the base of operations or, if there is no base of
25 operations, then the place from which such service is

1 directed or controlled, is in this state; or

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

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

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

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

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



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

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

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

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

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

1 or any local government unit and one or more other states or
 2 their instrumentalities or political subdivisions whose
 3 services are compensated by salary or wages.

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

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

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

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

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

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

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

1 other state; or

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

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

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

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

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

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

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

1 and has agricultural employment, all employees are covered
2 under the chapter regardless of the amount of money
3 expended for agricultural purposes.

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

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

14 "39-51-204. Exclusions from definition of employment.

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

16 (a) agricultural labor, except as provided in
17 39-51-203(8);

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

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

24 (d) service performed by an individual in the employ
25 of his son, daughter, or spouse and service performed by a

1 child under the age of 21 in the employ of his father or
2 mother;

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

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

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

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

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

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

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

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

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

17 (m) service performed for a corporation by one of its
 18 salari ed officers or directors or service performed for a
 19 partnership, association, or sole proprietorship by a
 20 salari ed owner or officer.

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

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

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

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

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

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

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

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

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

LC 0106/01

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB034, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

Amending Section 39-51-203, MCA and Section 39-51-204, MCA. To exclude corporation officers, sole proprietors, and working partners from the definition of "Employment" in the Unemployment Insurance Law.

ASSUMPTIONS:

1. Unemployment Insurance Contribution receipts previously projected by the Department will be \$59,200,000 in FY88 and \$60,250,000 in FY89. Unemployment Insurance Benefit payments previously projected by the Department will be \$55,500,000 in FY88 and \$58,000,000 in FY89.
2. Estimate that 9500 corporations are covered employers for Unemployment Insurance.
3. Estimate an average of 3 corporation officers' wages would be affected by the proposed law.
4. The average taxable wage base is estimated to be \$12,500 in FY88 and \$12,700 in FY89.
5. The average tax rate will be 2.7% in FY88 and 2.7% in FY89. (.1% Administrative Tax is included)
6. Estimate that 7% of all corporate officers covered by Unemployment Insurance will draw some benefits each year.
7. Estimate the Average Weekly Benefit Amount to be \$136 in FY88 and \$139 in FY89, and the Average Duration of Unemployment to be 14 weeks.

FISCAL IMPACT:Expenditures:

Current Law

Benefits

FY88

\$55,500,000

FY89

\$58,000,000

Proposed Law

Net Reduction

\$51,700,000
(\$ 3,800,000)\$54,100,000
(\$ 3,900,000)Revenue:

Current Law

Contributions

\$59,200,000

\$60,250,000

Proposed Law

Net Reduction

\$49,580,000
(\$ 9,620,000)\$50,475,000
(\$ 9,775,000)

Net Effect on Expendable Trust Fund

(\$ 5,820,000)

(\$ 5,875,000)

The legislation exempts corporate officers from coverage, but allows them to opt for unemployment insurance if they desire. Therefore, the fiscal impact will be reduced to the extent that corporate officers choose to opt for coverage.

David L. Hunter DATE 1/10/87
DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Ethel M. Harding DATE 1-12-87
ETHEL M. HARDING, PRIMARY SPONSOR

Fiscal Note for SB034, as introduced.**SB34**

~~Technical or Mechanical Defects in Proposed Legislation~~ SB34 was introduced

Form BD-15

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EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Net loss to Trust Fund on an annual basis.
2. Experienced Employers rates will eventually increase.

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

N/A

SB34

MONTANA LEGISLATURE
SPONSOR'S FISCAL NOTE

There is hereby submitted a Sponsor's Fiscal Note for: SB34 Version: as amended in committee

Amending Section 39-51-203, MCA and Section 39-51-204, MCA. To exclude certain salaried officers and directors of corporations and certain salaried owners and officers of partnerships, Associations, and sole proprietorships owning more than 10% of the voting stock from the definition of "Employment" in the Unemployment Insurance law.

Assumptions:

1. Unemployment Insurance Contribution receipts previously projected by the Department will be \$59,200,000 in FY88 and \$60,250,000 in FY89. Unemployment Insurance Benefit payments previously projected by the Department will be \$55,500,000 in FY88 and \$58,000,000 in FY89.
2. Estimate that 5000 corporations are covered employers for Unemployment Insurance.
3. Estimate an average of 3 corporation officers' wages would be affected by the proposed law.
4. The average taxable wage base is estimated to be \$12,500 in FY88 and \$12,700 in FY89.
5. The average tax rate will be 2.7% in FY88 and 2.7% in FY89. (.1% Administrative Tax is included)
6. Estimate 7% of all corporate officers covered by Unemployment Insurance will draw some benefits each year.
7. Estimate the Average Weekly Benefit Amount to be \$175 in FY88 and \$175 in FY89, and the average
- 8.. Duration of unemployment to be 14 weeks.

Based upon the determination of the Department of Labor there is no available data for exact estimations.

FISCAL IMPACT:

Expenditures:

	FY88	FY89
Current Law	\$55,500,000	\$58,000,000
Proposed Law	52,927,500	55,427,500
Net Reduction	<u>(2,572,500)</u>	<u>(2,572,500)</u>

Revenue:

Current Law	\$59,200,000	\$60,250,000
Proposed Law	54,137,500	55,106,500.
Net Reduction	<u>(5,062,500)</u>	<u>(5,143,500)</u>
Net effect on Expendable Trust Fund	(2,490,000)	(\$2,571,000)

The legislation exempts certain officers from coverage, but allows them to opt for unemployment insurance if they desire. Therefore, the fiscal impact will be reduced to the extent that corporate officers choose to opt for coverage.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

No apparent impact since the required funding will be reallocated among those employees eligible for benefits.

PRIMARY SPONSOR
Fiscal Note for:

Estel M. Gardner 2-17-87
SB34 Version: amended in committee

SB 34
SPONSOR'S

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

1 SENATE BILL NO. 34

2 INTRODUCED BY HARDING, E. SMITH, SEVERSON, THAYER,

3 ECK, KEATING, BRANDEWIE, C. SMITH, JONES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE
6 UNEMPLOYMENT INSURANCE LAW CERTAIN SALARIED OFFICERS AND
7 DIRECTORS OF CORPORATIONS AND CERTAIN SALARIED OWNERS AND
8 OFFICERS OF PARTNERSHIPS, ASSOCIATIONS, AND SOLE
9 PROPRIETORSHIPS; AND AMENDING SECTIONS 39-51-203 AND
10 39-51-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "39-51-203. Employment defined. (1) "Employment",
15 subject to other provisions of this section, means service
16 by an individual ~~or by an officer of a corporation~~ OR BY AN
17 OFFICER OF A CORPORATION OWNING LESS THAN 10% OF THE VOTING
18 STOCK, including service in interstate commerce, performed
19 for wages or under any contract of hire, written or oral,
20 express or implied.

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

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

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

1 of the service is performed in this state and:

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

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

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

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

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

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

1 services are performed that the entire service of such
2 individual is considered to be employment subject to this
3 chapter.

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

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

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

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

19 (5) The term "employment" includes service performed
20 after December 31, 1971, by an individual in the employ of
21 this state or any of its instrumentalities (or in the employ
22 of this state and one or more other states or their
23 instrumentalities) for a hospital or institution of higher
24 education located in this state. The term "employment"
25 includes service performed after July 1, 1975, by all

1 individuals, including without limitations those individuals
2 who work for the state of Montana, its university, any of
3 its colleges, public schools, components or units thereof,
4 or any local government unit and one or more other states or
5 their instrumentalities or political subdivisions whose
6 services are compensated by salary or wages.

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

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

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

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

22 (A) the employer is an individual who is a resident of
23 this state;

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

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

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

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

13 (i) an individual who is a resident of the United
14 States;

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

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

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

21 (8) Agricultural labor exempted under 39-51-204 is
22 considered employment subject to this chapter effective
23 January 1, 1978, whenever the employing unit pays \$20,000 or
24 more in cash to workers for agricultural labor in any
25 quarter in the current or preceding calendar year or employs

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

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

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

17 "39-51-204. Exclusions from definition of employment.

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

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

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

24 (c) service performed as an officer or member of the
25 crew of a vessel on the navigable waters of the United

1 States;

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

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

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

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

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

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

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

24 (j) service performed by an individual who is enrolled
25 at a nonprofit or public educational institution, which

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

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

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

20 ~~(m) service performed for a corporation by one of its~~
 21 ~~salaries officers or directors or service performed for a~~
 22 ~~partnership, association, or sole proprietorship by a~~
 23 ~~salaries owner or officer;~~

24 (M) SERVICE PERFORMED FOR A CORPORATION BY A SALARIED
 25 OFFICER OR DIRECTOR WHO OWNS 10% OR MORE OF THE VOTING STOCK

1 OF THE CORPORATION;

2 (N) SERVICE PERFORMED AS A SALARIED OWNER OR OFFICER
 3 OF A PARTNERSHIP, ASSOCIATION, OR SOLE PROPRIETORSHIP IF THE
 4 INDIVIDUAL PERFORMING SUCH SERVICE OWNS AT LEAST A 10%
 5 INTEREST IN THE ASSETS OF THE FIRM OR BUSINESS.

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

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

10 (a) in the employ of a church or convention or
 11 association of churches or an organization which is operated
 12 primarily for religious purposes and which is operated,
 13 supervised, controlled, or principally supported by a church
 14 or convention or association of churches;

15 (b) by a duly ordained, commissioned, or licensed
 16 minister of a church in the exercise of his ministry or by a
 17 member of a religious order in the exercise of duties
 18 required by such order;

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

21 (d) in a facility conducted for the purpose of
 22 carrying out a program of rehabilitation for individuals
 23 whose earning capacity is impaired by age or physical or
 24 mental deficiency or injury or providing remunerative work
 25 for individuals who, because of their impaired physical or

1 mental capacity, cannot be readily absorbed in the
2 competitive labor market by an individual receiving such
3 rehabilitation or remunerative work;

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

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

11 NEW SECTION. Section 3. Extension of authority. Any
12 existing authority of the department of labor and industry
13 to make rules on the subject of the provisions of this act
14 is extended to the provisions of this act.

15 NEW SECTION. SECTION 4. EFFECTIVE DATE. THIS ACT IS
16 EFFECTIVE JANUARY 1, 1988.

-End-

1 SENATE BILL NO. 34

2 INTRODUCED BY HARDING, E. SMITH, SEVERSON, THAYER,
3 ECK, KEATING, BRANDEWIE, C. SMITH, JONES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE
6 UNEMPLOYMENT INSURANCE LAW CERTAIN SALARIED OFFICERS AND
7 DIRECTORS OF CORPORATIONS AND CERTAIN SALARIED OWNERS AND
8 OFFICERS OF PARTNERSHIPS, ASSOCIATIONS, AND SOLE
9 PROPRIETORSHIPS; AND AMENDING SECTIONS 39-51-203 AND
10 39-51-204, MCA; AND PROVIDING AN EFFECTIVE DATE."
11

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

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

14 "39-51-203. Employment defined. (1) "Employment",
15 subject to other provisions of this section, means service
16 by an individual ~~or-by-an-officer-of-a-corporation~~ OR BY AN
17 OFFICER OF A CORPORATION OWNING LESS THAN 10% OF THE VOTING
18 STOCK, including service in interstate commerce, performed
19 for wages or under any contract of hire, written or oral,
20 express or implied.

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

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

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

1 of the service is performed in this state and:

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

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

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

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

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

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

1 services are performed that the entire service of such
2 individual is considered to be employment subject to this
3 chapter.

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

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

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

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

19 (5) The term "employment" includes service performed
20 after December 31, 1971, by an individual in the employ of
21 this state or any of its instrumentalities (or in the employ
22 of this state and one or more other states or their
23 instrumentalities) for a hospital or institution of higher
24 education located in this state. The term "employment"
25 includes service performed after July 1, 1975, by all

1 individuals, including without limitations those individuals
2 who work for the state of Montana, its university, any of
3 its colleges, public schools, components or units thereof,
4 or any local government unit and one or more other states or
5 their instrumentalities or political subdivisions whose
6 services are compensated by salary or wages.

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

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

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

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

22 (A) the employer is an individual who is a resident of
23 this state;

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

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

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

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

13 (i) an individual who is a resident of the United
14 States;

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

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

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

21 (8) Agricultural labor exempted under 39-51-204 is
22 considered employment subject to this chapter effective
23 January 1, 1978, whenever the employing unit pays \$20,000 or
24 more in cash to workers for agricultural labor in any
25 quarter in the current or preceding calendar year or employs

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

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

16 Section 2. Section 39-51-204, MCA, is amended to read:
17 "39-51-204. Exclusions from definition of employment.

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

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

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

24 (c) service performed as an officer or member of the
25 crew of a vessel on the navigable waters of the United

1 States;

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

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

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

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

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

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

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

24 (j) service performed by an individual who is enrolled
25 at a nonprofit or public educational institution, which

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

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

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

20 ~~(n) service performed for a corporation by one of its~~
 21 ~~salaries officers or directors or service performed for a~~
 22 ~~partnership, association, or sole proprietorship by a~~
 23 ~~salaries owner or officer;~~

24 (M) SERVICE PERFORMED FOR A CORPORATION BY A SALARIED
 25 OFFICER OR DIRECTOR WHO OWNS 10% OR MORE OF THE VOTING STOCK

1 OF THE CORPORATION;

2 (N) SERVICE PERFORMED AS A SALARIED OWNER OR OFFICER
 3 OF A PARTNERSHIP, ASSOCIATION, OR SOLE PROPRIETORSHIP IF THE
 4 INDIVIDUAL PERFORMING SUCH SERVICE OWNS AT LEAST A 10%
 5 INTEREST IN THE ASSETS OF THE FIRM OR BUSINESS.

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

8 (3) For the purposes of 39-51-203(6), the term
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 12 primarily for religious purposes and which is operated,
 13 supervised, controlled, or principally supported by a church
 14 or convention or association of churches;

15 (b) by a duly ordained, commissioned, or licensed
 16 minister of a church in the exercise of his ministry or by a
 17 member of a religious order in the exercise of duties
 18 required by such order;

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

21 (d) in a facility conducted for the purpose of
 22 carrying out a program of rehabilitation for individuals
 23 whose earning capacity is impaired by age or physical or
 24 mental deficiency or injury or providing remunerative work
 25 for individuals who, because of their impaired physical or

1 mental capacity, cannot be readily absorbed in the
2 competitive labor market by an individual receiving such
3 rehabilitation or remunerative work;

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

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

11 NEW SECTION. Section 3. Extension of authority. Any
12 existing authority of the department of labor and industry
13 to make rules on the subject of the provisions of this act
14 is extended to the provisions of this act.

15 NEW SECTION. SECTION 4. EFFECTIVE DATE. THIS ACT IS
16 EFFECTIVE JANUARY 1, 1988.

-End-