

SENATE BILL NO. 160

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 27, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 28, 1989	PRINTING REPORT.
JANUARY 31, 1989	SECOND READING, DO PASS.
FEBRUARY 1, 1989	ENGROSSING REPORT.
FEBRUARY 2, 1989	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 20, 1989	FIRST READING.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 92; NOES, 4.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *160*
2 INTRODUCED BY *Blaylock*
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO REVISE THE
7 EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO
8 AGRICULTURAL LABOR AND DOMESTIC SERVICE; TO DEFINE TAXABLE
9 WAGE BASE; TO REVISE THE AMOUNT OF WEEKLY UNEMPLOYMENT
10 COMPENSATION BENEFITS PAYABLE TO A CLAIMANT IF HE RECEIVES
11 PERIODIC PAYMENTS FROM CERTAIN OTHER SOURCES; TO REMOVE
12 DISQUALIFICATION FOR BENEFITS DUE TO A CLAIMANT'S RECEIPT OF
13 SEPARATION OR TERMINATION ALLOWANCE; TO PLACE A TIME LIMIT
14 FOR THE REDETERMINATION OF A CLAIM FOR BENEFITS; AMENDING
15 SECTIONS 39-51-201 THROUGH 39-51-203, 39-51-206, 39-51-602,
16 39-51-1121, 39-51-2203, 39-51-2306, AND 39-51-2402, MCA; AND
17 PROVIDING EFFECTIVE DATES."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

21 "39-51-201. General definitions. As used in this
22 chapter, unless the context clearly requires otherwise, the
23 following definitions apply:

24 (1) "Annual payroll" means the total amount of wages
25 paid by an employer, regardless of the time of payment, for

1 employment during a calendar year.

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

17 (3) "Benefits" means the money payments payable to an
18 individual, as provided in this chapter, with respect to the
19 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 had in its employ one or more
 25 individuals performing services for it within this state,

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

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

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

25 (12) "Gross misconduct" means a criminal act, other

1 than a violation of a motor vehicle traffic law, for which
2 an individual has been convicted in a criminal court or has
3 admitted or conduct which demonstrates a flagrant and wanton
4 disregard of and for the rights or title or interest of a
5 fellow employee or the employer.

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

8 (14) "Independent contractor" means an individual who
9 renders service in the course of an occupation and:

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

13 (b) is engaged in an independently established trade,
14 occupation, profession, or business.

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

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

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

23 (iii) provides an educational program for which it
24 awards a bachelor's or higher degree or provides a program
25 which is acceptable for full credit toward such a degree, a

1 program of postgraduate or postdoctoral studies, or a
2 program of training to prepare students for gainful
3 employment in a recognized occupation; and

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

5 (b) Notwithstanding any of the foregoing provisions of
6 this subsection, all colleges and universities in this state
7 are institutions of higher education for purposes of this
8 part.

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

12 (17) "Unemployment insurance administration fund" means
13 the unemployment insurance administration fund established
14 by this chapter from which administrative expenses under
15 this chapter shall be paid.

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

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

25 (i) the amount of any payment made by the employer, if

1 the payment was made under a plan established for the
2 employees in general or for a specific class or classes of
3 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,
7 only those payments made under a workers' compensation law
8 are excluded from "wages";

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

11 (D) death;

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

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

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

20 **Section 2.** Section 39-51-202, MCA, is amended to read:

21 **"39-51-202. Employer defined. "Employer" means:**

22 (1) any employing unit whose total annual payroll
23 within either the current or preceding calendar year equals
24 or exceeds the sum of \$1,000;

25 (2) any individual or employing unit which acquired

1 the organization, trade, or business or substantially all of
2 the assets thereof of another which at the time of such
3 acquisition was an employer subject to this chapter;

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

11 (4) any employing unit not an employer by reason of
12 any other subsection of this section for which, within
13 either the current or preceding calendar year, service is or
14 was performed with respect to which such employing unit is
15 liable for any federal tax against which credit may be
16 taken for contributions paid into a state unemployment fund
17 or an employing unit which, as a condition for approval of
18 this chapter for full tax credit against the tax imposed by
19 the Federal Unemployment Tax Act, is required pursuant to
20 such act to be an employer under this chapter;

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

25 (6) for the effective period of its election pursuant

1 to 39-51-1102, any other employing unit which has elected to
2 become fully subject to this chapter."

3 **Section 3.** Section 39-51-203, MCA, is amended to read:

4 "39-51-203. **Employment defined.** (1) "Employment",
5 subject to other provisions of this section, means service
6 by an individual or by an officer of a corporation,
7 including service in interstate commerce, performed for
8 wages or under any contract of hire, written or oral,
9 express or implied.

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

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

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

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

19 (B) the base of operations or place from which such
20 service is directed or controlled is not in any state in
21 which some part of the service is performed, but the
22 individual's residence is in this state.

23 (b) Service is considered to be localized within a
24 state if:

25 (i) the service is performed entirely within such

1 state; or

2 (ii) the service is performed both within and without
3 such state, but the service performed without such state is
4 incidental to the individual's service within the state, for
5 example, is temporary or transitory in nature or consists of
6 isolated transactions.

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

18 (4) Service performed by an individual for wages is
19 considered to be employment subject to this chapter unless
20 and until it is shown to the satisfaction of the department
21 that the individual is an independent contractor.

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

or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

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

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

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

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

(B) the employer is a corporation which is organized

under the laws of this state; or

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

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

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

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

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

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

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

(8) Agricultural labor exempted under 39-51-204 is considered employment whenever the employing unit pays \$20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or

employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer, including but not limited to an employing unit providing outfitter and guide services, is otherwise subject to the this chapter and has agricultural employment, all employees ~~are--covered--under--the--chapter~~ regardless--of--the--amount--of--money--expended--for--agricultural ~~purposes--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~~ engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(a) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(b) keeps separate books and records to account for the employment of persons in agricultural labor.

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

domestic--purposes engaged in domestic service must be excluded from coverage under this chapter if the employer:

(a) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(b) keeps separate books and records to account for the employment of persons in domestic service."

Section 4. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor -- who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the ~~Farm--Labor--Contractor--Registration~~ Act---of--1963 Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et. seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(b)(ii) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 5. Section 39-51-602, MCA, is amended to read:

"39-51-602. Method to be used by department in keeping wage records. ~~Wage-records-kept-by-the--department--for--the purposes--of--this--chapter--prior--to--January--17--19417--shall--be~~

~~kept-on-the-basis-of-wages-payable--and--wage~~ Wage records kept by the department for the purposes of this chapter ~~after-January-17-19417~~, shall be kept on the basis of wages paid."

Section 6. Section 39-51-1121, MCA, is amended to read:

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

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

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

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

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

(5) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) filed all contribution reports prescribed by the

department;

(b) paid all contributions and all assessments under 39-51-404(4) and penalties and interest thereon;

(c) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(d) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

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

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

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in section 39-51-1108.

~~(8)~~(9) "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."

Section 7. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. Reduction of benefits because of amounts

received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and entirely contributed to ~~in whole or in part~~ by a base-period employer. ~~However, the amount by which weekly benefits are to be reduced shall be determined by the ratio of the employer's contributions to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.~~

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981."

Section 8. Section 39-51-2306, MCA, is amended to

1 read:

2 "39-51-2306. Disqualification because of receipt of
3 certain other wages, compensation, or benefits. (1)
4 Effective April 1, 1977, an individual shall be disqualified
5 for benefits for any week with respect to which he is
6 receiving or has received payment in the form of:

7 ~~{a)--wages--in--lieu--of--notice---or---separation---or~~
8 ~~termination-allowance;~~

9 ~~{b)}~~(a) compensation for disability under the workers'
10 compensation law or the occupational disease law of this or
11 any other state or under a similar law of the United States
12 or under the social security disability law. However, when
13 an injured claimant has ceased to draw compensation benefits
14 and shall have returned to the labor market, he shall then
15 be entitled to receive unemployment compensation benefits
16 under this chapter if he shall be otherwise qualified.
17 Compensation which is received as a payment for a permanent
18 partial disability shall not be computed to be spread over a
19 period of weeks in advance so as to bar the recipient from
20 receiving unemployment compensation benefits under this
21 chapter, provided the recipient has returned to the labor
22 market and is otherwise qualified.

23 ~~{c)}~~(b) benefits under the Railroad Unemployment
24 Insurance Act or any state unemployment compensation act or
25 similar laws of any state or of the United States. This

1 disqualification does not apply to any week with respect to
2 which an individual is receiving or has received benefits
3 under an unemployment compensation law of another state or
4 of the United States if such benefits are paid pursuant to
5 39-51-504.

6 (2) Receipt of any wages, compensation, or benefits as
7 set forth in subsection (1) of this section after payment of
8 unemployment benefits and with respect to the same week for
9 which unemployment benefits were received will thereupon
10 require such individual to repay such unemployment benefits,
11 and the department may collect such unemployment benefits in
12 the same manner as provided for collection of benefits under
13 39-51-3206."

14 **Section 9.** Section 39-51-2402, MCA, is amended to
15 read:

16 "39-51-2402. Initial determination -- redetermination.
17 (1) A representative designated by the department and
18 hereinafter referred to as a deputy shall promptly examine
19 the claim and, on the basis of the facts found by the
20 deputy, shall either determine whether or not such claim is
21 valid and, if valid, the week with respect to which benefits
22 shall commence, the weekly benefit amount payable, and the
23 maximum benefit amount or shall refer such claim or any
24 question involved therein to an appeals referee who shall
25 make the decision with respect thereto in accordance with

1 the procedure prescribed in 39-51-2403. The deputy shall
2 promptly notify the claimant and any other interested party
3 of the decision and the reasons therefor.

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

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

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

19 (5) Except as provided in subsection (6), no
20 redetermination of a claim for benefits may be made after 2
21 years from the date of the initial determination.

22 (6) A redetermination may be made within 3 years from
23 the date of the initial determination of a claim if the
24 initial determination was based on a false claim,
25 misrepresentation, or failure to disclose a material fact by

1 the claimant or the employer."

2 NEW SECTION. Section 10. Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

6 NEW SECTION. Section 11. Effective dates. (1)
7 [Section 10 and this section] are effective on passage and
8 approval.

9 (2) [Sections 1 through 9] are effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB160, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An Act to generally revise and clarify the unemployment insurance laws; amending Sections 39-51-201 through 39-51-203, 39-51-206, 39-51-602, 39-51-1121, 39-51-2203, 39-51-2306, and 39-51-2402, MCA; and providing effective dates."

ASSUMPTIONS:

Only Sections 39-51-2203 of the proposed bill has any measurable fiscal impact. Assumptions follow:

39-51-2203

1. Based on current data, under the proposed law 150 fewer individuals will have benefit reductions due to pension income in each year of the biennium.
2. The average benefit duration for each individual is expected to be 14 weeks in each year of the biennium.
3. Based on the most recent data, the increase in average weekly benefit amount under the proposed law will be \$60 for those 150 reductions.
4. The result of these 150 fewer reductions will be an increase in benefit expenditures of \$126,000 each year of the biennium.

FISCAL IMPACT:

	Current	FY90 Proposed	Difference	Current	FY91 Proposed	Difference
	Law	Law		Law	Law	
<u>Expenditures:</u>	\$ -0-	\$126,000	\$126,000	\$ -0-	\$126,000	\$126,000
<u>Fund Impact:</u>						
Unemployment Insurance						
Trust Fund:						
(Benefit Expenditures)	\$ -0-	\$126,000	\$126,000	\$ -0-	\$126,000	\$126,000

Ray Shackelford

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/23/89

DATE

Chet Blaylock

CHET BLAYLOCK, PRIMARY SPONSOR

1-25-89

DATE

Fiscal Note for SB160, as introduced

SB 160

APPROVED BY COMM. ON
NATURAL RESOURCES

1 Spencer BILL NO. 160
2 INTRODUCED BY Blaylock
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
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10 COMPENSATION BENEFITS PAYABLE TO A CLAIMANT IF HE RECEIVES
11 PERIODIC PAYMENTS FROM CERTAIN OTHER SOURCES; TO REMOVE
12 DISQUALIFICATION FOR BENEFITS DUE TO A CLAIMANT'S RECEIPT OF
13 SEPARATION OR TERMINATION ALLOWANCE; TO PLACE A TIME LIMIT
14 FOR THE REDETERMINATION OF A CLAIM FOR BENEFITS; AMENDING
15 SECTIONS 39-51-201 THROUGH 39-51-203, 39-51-206, 39-51-602,
16 39-51-1121, 39-51-2203, 39-51-2306, AND 39-51-2402, MCA; AND
17 PROVIDING EFFECTIVE DATES."
18

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

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

21 "39-51-201. General definitions. As used in this
22 chapter, unless the context clearly requires otherwise, the
23 following definitions apply:

24 (1) "Annual payroll" means the total amount of wages
25 paid by an employer, regardless of the time of payment, for

1 employment during a calendar year.

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

17 (3) "Benefits" means the money payments payable to an
18 individual, as provided in this chapter, with respect to the
19 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 had in its employ one or more
 25 individuals performing services for it within this state,

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

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

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

25 (12) "Gross misconduct" means a criminal act, other

1 than a violation of a motor vehicle traffic law, for which
2 an individual has been convicted in a criminal court or has
3 admitted or conduct which demonstrates a flagrant and wanton
4 disregard of and for the rights or title or interest of a
5 fellow employee or the employer.

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

8 (14) "Independent contractor" means an individual who
9 renders service in the course of an occupation and:

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

13 (b) is engaged in an independently established trade,
14 occupation, profession, or business.

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

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

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

23 (iii) provides an educational program for which it
24 awards a bachelor's or higher degree or provides a program
25 which is acceptable for full credit toward such a degree, a

1 program of postgraduate or postdoctoral studies, or a
2 program of training to prepare students for gainful
3 employment in a recognized occupation; and

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

5 (b) Notwithstanding any of the foregoing provisions of
6 this subsection, all colleges and universities in this state
7 are institutions of higher education for purposes of this
8 part.

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

12 (17) "Unemployment insurance administration fund" means
13 the unemployment insurance administration fund established
14 by this chapter from which administrative expenses under
15 this chapter shall be paid.

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

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

25 (i) the amount of any payment made by the employer, if

the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability, but in the case of payments made by an employer directly to an employee, only those payments made under a workers' compensation law are excluded from "wages";

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

(D) death;

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

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

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

Section 2. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

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

(2) any individual or employing unit which acquired

the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

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

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

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

(6) for the effective period of its election pursuant

1 to 39-51-1102, any other employing unit which has elected to
2 become fully subject to this chapter."

3 **Section 3.** Section 39-51-203, MCA, is amended to read:

4 "39-51-203. **Employment** defined. (1) "Employment",
5 subject to other provisions of this section, means service
6 by an individual or by an officer of a corporation,
7 including service in interstate commerce, performed for
8 wages or under any contract of hire, written or oral,
9 express or implied.

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

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

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

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

19 (B) the base of operations or place from which such
20 service is directed or controlled is not in any state in
21 which some part of the service is performed, but the
22 individual's residence is in this state.

23 (b) Service is considered to be localized within a
24 state if:

25 (i) the service is performed entirely within such

1 state; or

2 (ii) the service is performed both within and without
3 such state, but the service performed without such state is
4 incidental to the individual's service within the state, for
5 example, is temporary or transitory in nature or consists of
6 isolated transactions.

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

18 (4) Service performed by an individual for wages is
19 considered to be employment subject to this chapter unless
20 and until it is shown to the satisfaction of the department
21 that the individual is an independent contractor.

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

1 or institution of higher education located in this state.
 2 The term "employment" includes service performed by all
 3 individuals, including without limitations those individuals
 4 who work for the state of Montana, its universities, 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 by an individual in the employ of a religious, charitable,
 11 scientific, literary, or educational organization.

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

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

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

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

25 (B) the employer is a corporation which is organized

1 under the laws of this state; or

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

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

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

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

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

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

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

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

employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer, including but not limited to an employing unit providing outfitter and guide services, is otherwise subject to the this chapter and has agricultural employment, all employees ~~are--covered--under--the--chapter~~ regardless--of--the--amount--of--money--expended--for--agricultural ~~purposes--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~~ engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(a) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(b) keeps separate books and records to account for the employment of persons in agricultural labor.

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

~~domestic--purposes~~ engaged in domestic service must be excluded from coverage under this chapter if the employer:

(a) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(b) keeps separate books and records to account for the employment of persons in domestic service."

Section 4. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor -- who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the ~~Farm--Labor--Contractor--Registration~~ Act--of--1963 Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et. seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(b) (ii) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 5. Section 39-51-602, MCA, is amended to read:

"39-51-602. Method to be used by department in keeping wage records. ~~Wage-records-kept-by-the--department--for--the purposes--of--this--chapter--prior--to--January-17-19417-shall-be~~

~~kept-on-the-basis-of-wages-payable--and--wage~~ Wage records kept by the department for the purposes of this chapter ~~after-January-17-19417~~ shall be kept on the basis of wages paid."

Section 6. Section 39-51-1121, MCA, is amended to read:

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

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

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

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

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

(5) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) filed all contribution reports prescribed by the

department;

(b) paid all contributions and all assessments under 39-51-404(4) and penalties and interest thereon;

(c) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(d) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

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

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

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in section 39-51-1108.

~~(8)~~(9) "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."

Section 7. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. Reduction of benefits because of amounts

received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and entirely contributed to in-whole-or-in-part by a base-period employer. ~~However, the amount by which weekly benefits are to be reduced shall be determined by the ratio of the employer's contributions to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.~~

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981."

Section 8. Section 39-51-2306, MCA, is amended to

1 read:

2 "39-51-2306. Disqualification because of receipt of
3 certain other wages, compensation, or benefits. (1)
4 Effective April 1, 1977, an individual shall be disqualified
5 for benefits for any week with respect to which he is
6 receiving or has received payment in the form of:

7 ~~{a)--wages--in--lieu--of--notice---or---separation---or~~
8 ~~termination-allowance;~~

9 {b){a} compensation for disability under the workers'
10 compensation law or the occupational disease law of this or
11 any other state or under a similar law of the United States
12 or under the social security disability law. However, when
13 an injured claimant has ceased to draw compensation benefits
14 and shall have returned to the labor market, he shall then
15 be entitled to receive unemployment compensation benefits
16 under this chapter if he shall be otherwise qualified.
17 Compensation which is received as a payment for a permanent
18 partial disability shall not be computed to be spread over a
19 period of weeks in advance so as to bar the recipient from
20 receiving unemployment compensation benefits under this
21 chapter, provided the recipient has returned to the labor
22 market and is otherwise qualified.

23 {c){b} benefits under the Railroad Unemployment
24 Insurance Act or any state unemployment compensation act or
25 similar laws of any state or of the United States. This

1 disqualification does not apply to any week with respect to
2 which an individual is receiving or has received benefits
3 under an unemployment compensation law of another state or
4 of the United States if such benefits are paid pursuant to
5 39-51-504.

6 (2) Receipt of any wages, compensation, or benefits as
7 set forth in subsection (1) of this section after payment of
8 unemployment benefits and with respect to the same week for
9 which unemployment benefits were received will thereupon
10 require such individual to repay such unemployment benefits,
11 and the department may collect such unemployment benefits in
12 the same manner as provided for collection of benefits under
13 39-51-3206."

14 **Section 9.** Section 39-51-2402, MCA, is amended to
15 read:

16 "39-51-2402. Initial determination -- redetermination.

17 (1) A representative designated by the department and
18 hereinafter referred to as a deputy shall promptly examine
19 the claim and, on the basis of the facts found by the
20 deputy, shall either determine whether or not such claim is
21 valid and, if valid, the week with respect to which benefits
22 shall commence, the weekly benefit amount payable, and the
23 maximum benefit amount or shall refer such claim or any
24 question involved therein to an appeals referee who shall
25 make the decision with respect thereto in accordance with

1 the procedure prescribed in 39-51-2403. The deputy shall
2 promptly notify the claimant and any other interested party
3 of the decision and the reasons therefor.

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

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

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

19 (5) Except as provided in subsection (6), no
20 redetermination of a claim for benefits may be made after 2
21 years from the date of the initial determination.

22 (6) A redetermination may be made within 3 years from
23 the date of the initial determination of a claim if the
24 initial determination was based on a false claim,
25 misrepresentation, or failure to disclose a material fact by

1 the claimant or the employer."

2 NEW SECTION. Section 10. Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

6 NEW SECTION. Section 11. Effective dates. (1)
7 [Section 10 and this section] are effective on passage and
8 approval.

9 (2) [Sections 1 through 9] are effective July 1, 1989.

-End-

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BILL NO. 160

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICE; TO DEFINE TAXABLE WAGE BASE; TO REVISE THE AMOUNT OF WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS PAYABLE TO A CLAIMANT IF HE RECEIVES PERIODIC PAYMENTS FROM CERTAIN OTHER SOURCES; TO REMOVE DISQUALIFICATION FOR BENEFITS DUE TO A CLAIMANT'S RECEIPT OF SEPARATION OR TERMINATION ALLOWANCE; TO PLACE A TIME LIMIT FOR THE REDETERMINATION OF A CLAIM FOR BENEFITS; AMENDING SECTIONS 39-51-201 THROUGH 39-51-203, 39-51-206, 39-51-602, 39-51-1121, 39-51-2203, 39-51-2306, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES."

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

There are no changes on SB 160 and will not be reprinted. Please refer to white (introduced) or yellow (2nd) for complete text.

STANDING COMMITTEE REPORT

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Page 2

March 15, 1989

Page 1 of 4

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 160 (third reading copy -- blue) be concurred in as amended.

Signed: Angela Russell
Angela Russell, Chairman

[REP. DRISCOLL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 8.

Following: "SERVICE;"

Insert: "TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS;"

2. Title, line 15.

Following: "THROUGH"

Strike: "39-51-203"

Insert: "39-51-204"

3. Page 14, line 7.

Following: line 7

Insert: "Section 4. Section 39-51-204, MCA, is amended to read: "39-51-204. Exclusions from definition of employment. (1)

The term "employment" does not include:

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

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

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

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

(e) service performed in the employ of any other state or

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

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

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

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

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

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

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

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection); or

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

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;
(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;
(iii) may perform services for anyone without limitation;
(iv) may accept or reject any job;
(v) furnishes substantially all tools and equipment necessary to provide the services; and
(vi) works under a written contract that:
(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.
(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for

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

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

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

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

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

Renumber: subsequent sections

4. Page 22, line 7.
Strike: "10"
Insert: "11"

5. Page 22, line 9.
Strike: "9"
Insert: "10"

SENATE BILL NO. 160

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICE; TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS; TO DEFINE TAXABLE WAGE BASE; TO REVISE THE AMOUNT OF WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS PAYABLE TO A CLAIMANT IF HE RECEIVES PERIODIC PAYMENTS FROM CERTAIN OTHER SOURCES; TO REMOVE DISQUALIFICATION FOR BENEFITS DUE TO A CLAIMANT'S RECEIPT OF SEPARATION OR TERMINATION ALLOWANCE; TO PLACE A TIME LIMIT FOR THE REDETERMINATION OF A CLAIM FOR BENEFITS; AMENDING SECTIONS 39-51-201 THROUGH ~~39-51-203~~ 39-51-204, 39-51-206, 39-51-602, 39-51-1121, 39-51-2203, 39-51-2306, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES."

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 or a similar statute of another state 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 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 pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

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

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

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

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

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a

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

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

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

1 shall be paid.

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

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

10 (14) "Independent contractor" means an individual who
11 renders service in the course of an occupation and:

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

15 (b) is engaged in an independently established trade,
16 occupation, profession, or business.

17 (15) (a) "Institution of higher education", for the
18 purposes of this part, means an educational institution
19 which:

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

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

25 (iii) provides an educational program for which it

1 awards a bachelor's or higher degree or provides a program
2 which is acceptable for full credit toward such a degree, a
3 program of postgraduate or postdoctoral studies, or a
4 program of training to prepare students for gainful
5 employment in a recognized occupation; and

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

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

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

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

18 (18) (a) "Wages" means all remuneration payable for
19 personal services, including commissions and bonuses, the
20 cash value of all remuneration payable in any medium other
21 than cash, and backpay received pursuant to a dispute
22 related to employment. The reasonable cash value of
23 remuneration payable in any medium other than cash shall be
24 estimated and determined in accordance with rules prescribed
25 by the department.

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

2 (i) the amount of any payment made by the employer, if

3 the payment was made under a plan established for the

4 employees in general or for a specific class or classes of

5 employees, to or on behalf of the employee for:

6 (A) retirement;

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

8 of payments made by an employer directly to an employee,

9 only those payments made under a workers' compensation law

10 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 (19) "Week" means a period of 7 consecutive calendar

18 days ending at midnight on Saturday.

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

20 amount of benefits the individual would be entitled to

21 receive for 1 week of total unemployment."

22 **Section 2.** Section 39-51-202, MCA, is amended to read:

23 **"39-51-202. Employer defined. "Employer" means:**

24 (1) any employing unit whose total annual payroll

25 within either the current or preceding calendar year equals

1 or exceeds the sum of \$1,000;

2 (2) any individual or employing unit which acquired

3 the organization, trade, or business or substantially all of

4 the assets thereof of another which at the time of such

5 acquisition was an employer subject to this chapter;

6 (3) any individual or employing unit which acquired

7 the organization, trade, or business or substantially all

8 the assets thereof of another employing unit not an employer

9 subject to this chapter and which, if subsequent to such

10 acquisition it were treated as a single unit with such other

11 employing unit, would be an employer under subsection (1) of

12 this section;

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

14 any other subsection of this section for which, within

15 either the current or preceding calendar year, service is or

16 was performed with respect to which such employing unit is

17 liable for any federal tax against which credit may be

18 taken for contributions paid into a state unemployment fund

19 or an employing unit which, as a condition for approval of

20 this chapter for full tax credit against the tax imposed by

21 the Federal Unemployment Tax Act, is required pursuant to

22 such act to be an employer under this chapter;

23 (5) any employing unit which, having become an

24 employer under subsection (1), (2), (3), or (4) has not,

25 under 39-51-1101, ceased to be an employer subject to this

1 chapter; or

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

5 **Section 3.** Section 39-51-203, MCA, is amended to read:

6 "39-51-203. **Employment defined.** (1) "Employment",
7 subject to other provisions of this section, means service
8 by an individual or by an officer of a corporation,
9 including service in interstate commerce, performed for
10 wages or under any contract of hire, written or oral,
11 express or implied.

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

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

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

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

21 (B) the base of operations or place from which such
22 service is directed or controlled is not in any state in
23 which some part of the service is performed, but the
24 individual's residence is in this state.

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

1 state if:

2 (i) the service is performed entirely within such
3 state; or

4 (ii) the service is performed both within and without
5 such state, but the service performed without such state is
6 incidental to the individual's service within the state, for
7 example, is temporary or transitory in nature or consists of
8 isolated transactions.

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

20 (4) Service performed by an individual for wages is
21 considered to be employment subject to this chapter unless
22 and until it is shown to the satisfaction of the department
23 that the individual is an independent contractor.

24 (5) The term "employment" includes service performed
25 by an individual in the employ of this state or any of its

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

11 (6) The term "employment" includes service performed
 12 by an individual in the employ of a religious, charitable,
 13 scientific, literary, or educational organization.

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

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

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

25 (A) the employer is an individual who is a resident of

1 this state;

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

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

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

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

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

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

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

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

24 (8) Agricultural labor exempted under 39-51-204 is
 25 considered employment whenever the employing unit pays

1 \$20,000 or more in cash to workers for agricultural labor in
 2 any quarter in the current or preceding calendar year or
 3 employs 10 or more workers in agricultural labor on 20 days
 4 in 20 different weeks during the current or preceding
 5 calendar year. If an employer, including but not limited to
 6 an employing unit providing outfitter and guide services, is
 7 otherwise subject to the this chapter and has agricultural
 8 employment, all employees ~~are--covered--under--the--chapter~~
 9 ~~regardless--of--the--amount--of--money--expended--for--agricultural~~
 10 ~~purposes--When--the--otherwise--subject--wages--are--paid--by--the~~
 11 ~~employing--unit--for--the--purpose--of--providing--outfitter--and~~
 12 ~~guide--services--the--agricultural--wages--are--not--covered~~
 13 engaged in agricultural labor must be excluded from coverage
 14 under this chapter if the employer:

15 (a) in any quarter or calendar year, as applicable,
 16 does not meet either of the tests relating to the monetary
 17 amount or number of employees and days worked, for the
 18 subject wages attributable to agricultural labor; and

19 (b) keeps separate books and records to account for
 20 the employment of persons in agricultural labor.

21 (9) Domestic service exempted under 39-51-204(1)(b) is
 22 considered employment whenever the employing unit pays
 23 \$1,000 or more in cash for domestic service in any quarter
 24 during the current or preceding calendar year. If an
 25 employer is otherwise subject to the this chapter and has

1 domestic service employment, all employees ~~are covered under~~
 2 ~~the--chapter--regardless--of--the--amount--of--money--expended--for~~
 3 ~~domestic--purposes~~ engaged in domestic service must be
 4 excluded from coverage under this chapter if the employer:

5 (a) does not meet the monetary payment test in any
 6 quarter or calendar year, as applicable, for the subject
 7 wages attributable to domestic service; and

8 (b) keeps separate books and records to account for
 9 the employment of persons in domestic service."

10 **SECTION 4. SECTION 39-51-204, MCA, IS AMENDED TO READ:**

11 "39-51-204. Exclusions from definition of employment.

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

13 (a) agricultural labor, except as provided in
 14 39-51-203(8);

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

18 (c) service performed as an officer or member of the
 19 crew of a vessel on the navigable waters of the United
 20 States;

21 (d) service performed by an individual in the employ
 22 of that individual's son, daughter, or spouse and service
 23 performed by a child under the age of 21 in the employ of
 24 the child's father or mother;

25 (e) service performed in the employ of any other state

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

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

23 (g) services performed in the delivery and
 24 distribution of newspapers or shopping news from house to
 25 house and business establishments by an individual under the

1 age of 18 years, but not including the delivery or
 2 distribution to any point or points for subsequent delivery
 3 or distribution;

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

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

18 (j) service performed by an individual who is enrolled
 19 at a nonprofit or public educational institution, which
 20 normally maintains a regular faculty and curriculum and
 21 normally has a regularly organized body of students in
 22 attendance at the place where its educational activities are
 23 carried on, as a student in a full-time program taken for
 24 credit at such institution which combines academic
 25 instruction with work experience if such service is an

1 integral part of such program and such institution has so
 2 certified to the employer, except that this subsection shall
 3 not apply to service performed in a program established for
 4 or on behalf of an employer or group of employers;

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

7 (l) services performed by a cosmetologist who is
 8 licensed under Title 37, chapter 31, or a barber who is
 9 licensed under Title 37, chapter 30, and who has
 10 acknowledged in writing that he is not covered by
 11 unemployment insurance and workers' compensation and who
 12 contracts with a cosmetological establishment as defined in
 13 37-31-101 or a barbershop as defined in 37-30-101, which
 14 contract shall show the cosmetologist or barber is free from
 15 all control and direction of the owner in the contract and
 16 in fact; receives payment for services from his or her
 17 individual clientele; leases, rents, or furnishes all of his
 18 or her own equipment, skills, or knowledge; and whose
 19 contract gives rise to an action for breach of contract in
 20 the event of contract termination (the existence of a single
 21 license for the cosmetological establishment or barbershop
 22 shall not be construed as a lack of freedom from control or
 23 direction under this subsection); or

24 (m) casual labor not in the course of an employer's
 25 trade or business performed in any calendar quarter, unless

1 the cash remuneration paid for such service is \$50 or more
 2 and such service is performed by an individual who is
 3 regularly employed by such employer to perform such service.
 4 "Regularly employed" means the services are performed during
 5 at least 24 days in the same quarter.

6 (n) services performed for the installation of floor
 7 coverings if the installer:

8 (i) bids or negotiates a contract price based upon
 9 work performed by the yard or by the job;

10 (ii) is paid upon completion of an agreed upon portion
 11 of the job or after the job is completed;

12 (iii) may perform services for anyone without
 13 limitation;

14 (iv) may accept or reject any job;

15 (v) furnishes substantially all tools and equipment
 16 necessary to provide the services; and

17 (vi) works under a written contract that:

18 (A) gives rise to a breach of contract action if the
 19 installer or any other party fails to perform the contract
 20 obligations;

21 (B) states the installer is not covered by
 22 unemployment insurance; and

23 (C) requires the installer to provide a current
 24 workers' compensation policy or to obtain an exemption from
 25 workers' compensation requirements.

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

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

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

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

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

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

1 such work relief or work training; or

2 (e) for a state prison or other state correctional or
3 custodial institution by an inmate of that institution."

4 **Section 5.** Section 39-51-206, MCA, is amended to read:

5 "39-51-206. Agricultural labor -- who treated as
6 employer of member of a crew furnished by a crew leader. (1)
7 For the purposes of 39-51-203, any individual who is a
8 member of a crew furnished by a crew leader to perform
9 service in agricultural labor for any other person shall be
10 treated as an employee of such crew leader if:

11 (a) such crew leader holds a valid certificate of
12 registration under the ~~Parm--labor--Contractor--Registration~~
13 ~~Act---of--1963~~ Migrant and Seasonal Agricultural Worker
14 Protection Act, as amended (29 U.S.C. 1801, et. seq.); or

15 (b) (i) substantially all the members of such crew
16 operate or maintain tractors, mechanized harvesting or
17 cropdusting equipment, or any other mechanized equipment
18 which is provided by such crew leader; and

19 (b) (ii) such individual is not an employee of such
20 other person within the meaning of 39-51-202(1),
21 39-51-203(8), or 39-51-203(9).

22 (2) In the case of any individual who is furnished by
23 a crew leader to perform service in agricultural labor for
24 any other person and who is not treated as an employee of
25 such crew leader under subsection (1):

1 (a) such other person and not the crew leader shall be
2 treated as the employer of such individual; and

3 (b) such other person shall be treated as having paid
4 cash remuneration to such individual in an amount equal to
5 the amount of cash remuneration paid to such individual by
6 the crew leader, either on his own behalf or on behalf of
7 such other person, for the service in agricultural labor
8 performed for such other person.

9 (3) The term "crew leader" means an individual who:

10 (a) furnishes individuals to perform service in
11 agricultural labor for any other person;

12 (b) pays, either on his own behalf or on behalf of
13 such other person, the individuals so furnished by him for
14 the service in agricultural labor performed by them; and

15 (c) has not entered into a written agreement with such
16 other person under which such individual is designated as an
17 employee of such other person."

18 **Section 6.** Section 39-51-602, MCA, is amended to read:

19 "39-51-602. Method to be used by department in keeping
20 wage records. ~~Wage records kept by the department for the~~
21 ~~purposes of this chapter prior to January 17, 1941, shall be~~
22 ~~kept on the basis of wages payable and wage~~ Wage records
23 kept by the department for the purposes of this chapter
24 after January 17, 1941, shall be kept on the basis of wages
25 paid."

1 **Section 7.** Section 39-51-1121, MCA, is amended to
2 read:

3 "39-51-1121. Definitions. As used in this part and
4 part 12, the following definitions apply:

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

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

11 (3) "Deficit employer" means an employer who is
12 subject under this chapter and who has established a record
13 of accumulated benefits charged to the employer's account in
14 excess of the employer's accumulated contributions paid as
15 of the cutoff date.

16 (4) "Department" means the department of labor and
17 industry.

18 (5) "Eligible employer" means an employer who has been
19 subject under this chapter for the 3 fiscal years
20 immediately preceding the computation date and who has:

21 (a) filed all contribution reports prescribed by the
22 department;

23 (b) paid all contributions and all assessments under
24 39-51-404(4) and penalties and interest thereon;

25 (c) established a record of accumulated contributions

in excess of benefits charged to the employer's account; and

(d) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

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

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

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in section 39-51-1108.

(9) "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."

Section 8. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is

based on work for and entirely contributed to in-whole-or-in part by a base-period employer. However, ~~the amount by which weekly benefits are to be reduced shall be determined by the ratio of the employer's contributions to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.~~

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981."

Section 9. Section 39-51-2306, MCA, is amended to read:

"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified

1 for benefits for any week with respect to which he is
2 receiving or has received payment in the form of:

3 ~~(a) wages in lieu of notice or separation or~~
4 ~~termination allowance;~~

5 (b)(a) compensation for disability under the workers'
6 compensation law or the occupational disease law of this or
7 any other state or under a similar law of the United States
8 or under the social security disability law. However, when
9 an injured claimant has ceased to draw compensation benefits
10 and shall have returned to the labor market, he shall then
11 be entitled to receive unemployment compensation benefits
12 under this chapter if he shall be otherwise qualified.
13 Compensation which is received as a payment for a permanent
14 partial disability shall not be computed to be spread over a
15 period of weeks in advance so as to bar the recipient from
16 receiving unemployment compensation benefits under this
17 chapter, provided the recipient has returned to the labor
18 market and is otherwise qualified.

19 (c)(b) benefits under the Railroad Unemployment
20 Insurance Act or any state unemployment compensation act or
21 similar laws of any state or of the United States. This
22 disqualification does not apply to any week with respect to
23 which an individual is receiving or has received benefits
24 under an unemployment compensation law of another state or
25 of the United States if such benefits are paid pursuant to

1 39-51-504.

2 (2) Receipt of any wages, compensation, or benefits as
3 set forth in subsection (1) of this section after payment of
4 unemployment benefits and with respect to the same week for
5 which unemployment benefits were received will thereupon
6 require such individual to repay such unemployment benefits,
7 and the department may collect such unemployment benefits in
8 the same manner as provided for collection of benefits under
9 39-51-3206."

10 **Section 10.** Section 39-51-2402, MCA, is amended to
11 read:

12 "39-51-2402. Initial determination -- redetermination.

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

25 (2) The deputy may for good cause reconsider the

1 decision and shall promptly notify the claimant and such
2 other interested parties of the amended decision and the
3 reasons therefor.

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

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

15 (5) Except as provided in subsection (6), no
16 redetermination of a claim for benefits may be made after 2
17 years from the date of the initial determination.

18 (6) A redetermination may be made within 3 years from
19 the date of the initial determination of a claim if the
20 initial determination was based on a false claim,
21 misrepresentation, or failure to disclose a material fact by
22 the claimant or the employer."

23 **NEW SECTION. Section 11. Extension of authority.** Any
24 existing authority to make rules on the subject of the
25 provisions of [this act] is extended to the provisions of

1 [this act].

2 **NEW SECTION. Section 12. Effective dates.** (1)
3 [Section ~~10~~ 11 and this section] are effective on passage
4 and approval.

5 (2) [Sections 1 through 9 10] are effective July 1,
6 1989.

-End-