

SENATE BILL NO. 184

INTRODUCED BY BLAYLOCK, BENEDICT, KEATING
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

JANUARY 18, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 3, 1993 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 4, 1993 PRINTING REPORT.

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 5, 1993 SECOND READING, DO PASS.

FEBRUARY 6, 1993 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 43; NOES, 5.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 8, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MARCH 6, 1993 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 9, 1993 SECOND READING, CONCURRED IN.

MARCH 11, 1993 THIRD READING, CONCURRED IN.
AYES, 96; NOES, 3.

MARCH 12, 1993 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 16, 1993 RECEIVED FROM HOUSE.

MARCH 17, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *184*
 2 INTRODUCED BY *Blaylock Bennett* *Leah*
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 6 CLARIFYING THE UNEMPLOYMENT INSURANCE LAWS; PROHIBITING A
 7 PARENT OR GUARDIAN FROM WAIVING ANOTHER'S RIGHTS TO
 8 UNEMPLOYMENT BENEFITS; CLARIFYING THE DEPARTMENT'S
 9 RESPONSIBILITY FOR REVIEWING AND ISSUING DETERMINATIONS ON
 10 AN INDIVIDUAL'S EMPLOYMENT STATUS WHEN AN UNEMPLOYMENT
 11 BENEFITS CLAIM IS FILED; CLARIFYING THAT THE EXCLUSIONS FROM
 12 EMPLOYMENT DO NOT APPLY TO A GOVERNMENTAL ENTITY OR A
 13 NONPROFIT ORGANIZATION UNLESS EXCLUDED UNDER THE FEDERAL
 14 UNEMPLOYMENT TAX ACT; ALLOWING TRANSFER OF AN ELIGIBLE
 15 EXPERIENCE RATING; REMOVING REFERENCE TO SECTION 203(A) OF
 16 THE FEDERAL IMMIGRATION AND NATIONALITY ACT; REVISING
 17 REDUCTION OF BENEFITS BECAUSE OF THE AMOUNT RECEIVED FROM
 18 CERTAIN OTHER SOURCES TO REFLECT FEDERAL REQUIREMENTS FOR
 19 THE OFFSET OF BENEFITS DUE TO A PENSION RECEIPT; CLARIFYING
 20 THE DEPARTMENT'S AUTHORITY TO COLLECT OVERPAYMENTS THROUGH
 21 THE OFFSET OF CURRENT BENEFIT ENTITLEMENTS; SPECIFYING WAGES
 22 THAT QUALIFY AS EXTENDED BENEFITS; AMENDING SECTIONS
 23 39-51-204, 39-51-1219, 39-51-2110, 39-51-2203, 39-51-2508,
 24 AND 39-51-3105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 25 DATE."

1
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 3 **Section 1.** Section 39-51-204, MCA, is amended to read:
 4 **"39-51-204. Exclusions from definition of employment.**
 5 (1) The term "employment" does not include:
 6 (a) agricultural labor, except as provided in
 7 39-51-202(2). If an employer is otherwise subject to this
 8 chapter and has agricultural employment, all employees
 9 engaged in agricultural labor must be excluded from coverage
 10 under this chapter if the employer:
 11 (i) in any quarter or calendar year, as applicable,
 12 does not meet either of the tests relating to the monetary
 13 amount or number of employees and days worked, for the
 14 subject wages attributable to agricultural labor; and
 15 (ii) keeps separate books and records to account for the
 16 employment of persons in agricultural labor.
 17 (b) household and domestic service in a private home,
 18 local college club, or local chapter of a college fraternity
 19 or sorority, except as provided in 39-51-202(3). If an
 20 employer is otherwise subject to this chapter and has
 21 domestic service employment, all employees engaged in
 22 domestic service must be excluded from coverage under this
 23 chapter if the employer:
 24 (i) does not meet the monetary payment test in any
 25 quarter or calendar year, as applicable, for the subject

1 wages attributable to domestic service; and

2 (ii) keeps separate books and records to account for the
3 employment of persons in domestic service.

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

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

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

22 (f) service with respect to which unemployment
23 insurance is payable under an unemployment insurance system
24 established by an act of congress, provided that the
25 department must shall enter into agreements with the proper

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

11 (g) services performed as a newspaper carrier or
12 free-lance correspondent if the person performing the
13 services ~~or--a--parent-or-guardian-of-the-person-performing~~
14 ~~the-services-in-the-case-of--a--minor~~ has acknowledged in
15 writing that ~~the--person--performing--the-services-and~~ the
16 services are not covered. As used in this subsection:

17 (i) "free-lance correspondent" is a person who submits
18 articles or photographs for publication and is paid by the
19 article or by the photograph; and

20 (ii) "newspaper carrier" means a person who provides a
21 newspaper with the service of delivering newspapers singly
22 or in bundles. The term does not include an employee of the
23 paper who, incidentally to his the employee's main duties,
24 carries or delivers papers.

25 (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 the service is performed by a student who is enrolled and is regularly attending classes at such a school, college, or university or by the spouse of such a student if such the spouse is advised, at the time such the spouse commences to perform such the service, that the employment of such the spouse to perform such the service is provided under a program to provide financial assistance to such the student by such the school, college, or university and such the 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 an institution which that combines academic instruction with work experience if such the service is an integral part of such the program and such the institution has ~~so~~ certified that fact to the employer, except that this subsection ~~shall~~ does not apply to service performed in a program established for or on behalf of an employer or group

of employers;

(k) service performed in the employ of a hospital if such the 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:

(i) who has acknowledged in writing that he the cosmetologist or barber is not covered by unemployment insurance and workers' compensation and;

(ii) who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract ~~shall~~ must show that the cosmetologist or barber;

(A) is free from all control and direction of the owner in the contract ~~and-in-fact~~;

(B) receives payment for services from ~~his--or--her~~ individual clientele; and

(C) leases, rents, or furnishes all of ~~his-or-her~~ the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) 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~~ may not be construed as a lack of freedom from control or direction under this

1 subsection);

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

9 (n) employment of sole proprietors or working members
10 of a partnership;

11 (o) services performed for the installation of floor
12 coverings if the installer:

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

15 (ii) is paid upon completion of an ~~agreed--upon~~
16 agreed-upon portion of the job or after the job is
17 completed;

18 (iii) may perform services for anyone without
19 limitation;

20 (iv) may accept or reject any job;

21 (v) furnishes substantially all tools and equipment
22 necessary to provide the services; and

23 (vi) works under a written contract that:

24 (A) gives rise to a breach of contract action if the
25 installer or any other party fails to perform the contract

1 obligations;

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

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

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

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

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

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

20 (c) in a facility conducted for the purpose of carrying
21 out a program of rehabilitation for individuals whose
22 earning capacity is impaired by age or physical or mental
23 deficiency or injury or providing remunerative work for
24 individuals who, because of ~~their~~ impaired physical or
25 mental capacity, cannot be readily absorbed in the

1 competitive labor market by an individual receiving such
2 rehabilitation or remunerative work;

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

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

10 (4) An individual found to be an independent contractor
11 by the department under the terms of 39-71-401(3) is
12 considered an independent contractor for the purposes of
13 this chapter. An independent contractor is not precluded
14 from filing a claim for benefits and receiving a
15 determination pursuant to 39-51-2402.

16 (5) This section does not apply to a state or local
17 governmental entity or a nonprofit organization defined
18 under section 501(c)(3) of the Internal Revenue Code unless
19 the service is excluded from employment as defined in
20 section 3309(b) of the Federal Unemployment Tax Act."

21 **Section 2.** Section 39-51-1219, MCA, is amended to read:

22 "39-51-1219. Procedures for the substitution, merger,
23 or acquisition of an employer account by a successor
24 employing unit. (1) Subject to the provisions of subsection
25 (3), whenever any individual or organization (whether or not

1 a covered employer) in any manner succeeds to or acquires
2 all or substantially all of the business of an employer who
3 at the time of acquisition was a covered employer and
4 whenever in respect to whom the department finds that the
5 business of the predecessor is continued solely by the
6 successor:

7 (a) the separate account and the actual contribution,
8 benefit, and taxable payroll experience of the predecessor
9 ~~shall~~ must, upon the joint application of the predecessor
10 and the successor within 90 days after such the acquisition
11 and approval by the department, be transferred to the
12 successor employer for the purpose of determining the
13 successor's liability and rate of contribution; and

14 (b) any successor who was not an employer on the date
15 of acquisition becomes a covered employer as of such that
16 date.

17 (2) Whenever any individual or organization (whether or
18 not a covered employer) in any manner succeeds to or
19 acquires part of the business of an employer who at the time
20 of acquisition was a covered employer and whenever such that
21 portion of the business is continued by the successor:

22 (a) so much of the separate account and the actual
23 contribution, benefit, and taxable payroll experience of the
24 predecessor as is attributable to the portion of the
25 business transferred, as determined on a pro rata basis in

the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last four 4 completed calendar quarters immediately preceding the date of transfer, ~~shall~~ must, upon the joint application of the predecessor and the successor within 90 days after such the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

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

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

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll

information within 10 days after notice, the transfer ~~shall~~ must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.

(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on

the combined experience of the predecessor and successor.

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

Section 3. Section 39-51-2110, MCA, is amended to read:

"39-51-2110. **Payment of benefits to aliens.** (1) Benefits ~~shall~~ may not be payable paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section-203(a)(7)-or~~ section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not

payable to ~~them~~ the individuals because of ~~their~~ the individuals' alien status ~~shall~~ must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no a determination that benefits to ~~such~~ the individual are not payable because of ~~his~~ the individual's alien status ~~shall~~ may not be made except upon a preponderance of the evidence."

Section 4. 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~~ An individual's weekly benefit amount ~~shall~~ must be reduced (but not below zero) by the amount that ~~he~~ the individual is receiving from in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment which that is based on the previous work for-and ~~entirely-contributed-to-by-a-base-period-employer.~~

~~{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, of the individual and that is reasonably attributable to the week if:~~

~~(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and~~

~~(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.~~

~~(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution."~~

Section 5. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits -- disqualifications -- acceptance of suitable work. (1) An individual ~~shall--be~~ is eligible to receive

extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such the week that the individual:

(a) he is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

~~{b}--he~~ (c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he--is disqualified, he the individual satisfies the requirements for requalification in that part; and

~~{c}--he~~ (d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection ~~{1}{b}~~ (1)(c), an individual is disqualified for extended benefits if he the individual fails to seek work. Such The disqualification continues for the week in which such the failure occurs and until the individual has performed services, other than self-employment, for which

remuneration is received equal to or in excess of his the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless he the individual has earned at least eight times the weekly benefit amount after the date of such the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless he the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". Such The definition ~~shall~~ must be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981."

Section 6. Section 39-51-3105, MCA, is amended to read:

"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void -- benefits exempt from levy, execution, attachment, or other remedy for collection of debt -- exception. Any assignment, pledge, or encumbrance of

any right to benefits ~~which that~~ are or may become due or payable under this chapter ~~shall-be~~ is void, and ~~such the~~ rights to benefits ~~shall-be~~ are exempt from levy, execution, attachment, or any other remedy ~~whatsoever~~ provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, ~~shall-be~~ are exempt from any remedy ~~whatsoever~~ for the collection of all debts except as provided in 39-51-3106 and 39-51-3206. Any waiver of any exemption provided for in this section ~~shall-be~~ is void."

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0184, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising and clarifying the unemployment insurance laws; and providing an immediate effective date.

FISCAL IMPACT:

The proposed legislation has no fiscal impact. It revises and clarifies statute.

David Lewis 1-21-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chet Blaylock 1/24/93

CHET BLAYLOCK, PRIMARY SPONSOR DATE

Fiscal Note for SB0184, as introduced

SB 184

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 184

INTRODUCED BY BLAYLOCK, BENEDICT, KEATING

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE UNEMPLOYMENT INSURANCE LAWS; PROHIBITING A PARENT OR GUARDIAN FROM WAIVING ANOTHER'S RIGHTS TO UNEMPLOYMENT BENEFITS; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY FOR REVIEWING AND ISSUING DETERMINATIONS ON AN INDIVIDUAL'S EMPLOYMENT STATUS WHEN AN UNEMPLOYMENT BENEFITS CLAIM IS FILED; CLARIFYING THAT THE EXCLUSIONS FROM EMPLOYMENT DO NOT APPLY TO A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION UNLESS EXCLUDED UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ALLOWING TRANSFER OF AN ELIGIBLE EXPERIENCE RATING; REMOVING REFERENCE TO SECTION 203(A) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT; REVISING REDUCTION OF BENEFITS BECAUSE OF THE AMOUNT RECEIVED FROM CERTAIN OTHER SOURCES TO REFLECT FEDERAL REQUIREMENTS FOR THE OFFSET OF BENEFITS DUE TO A PENSION RECEIPT; CLARIFYING THE DEPARTMENT'S AUTHORITY TO COLLECT OVERPAYMENTS THROUGH THE OFFSET OF CURRENT BENEFIT ENTITLEMENTS; SPECIFYING WAGES THAT QUALIFY AS EXTENDED BENEFITS; AMENDING SECTIONS 39-51-204, 39-51-1219, 39-51-2110, 39-51-2203, 39-51-2508, AND 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) 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

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

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject



1 wages attributable to domestic service; and

2 (ii) keeps separate books and records to account for the

3 employment of persons in domestic service.

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

5 crew of a vessel on the navigable waters of the United

6 States;

7 (d) service performed by an individual in the employ of

8 that individual's son, daughter, or spouse and service

9 performed by a child under the age of 21 in the employ of

10 the child's father or mother;

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

12 or its political subdivisions or of the United States

13 government or of an instrumentality of any other state or

14 states or their political subdivisions or of the United

15 States, except that national banks organized under the

16 national banking law ~~shall~~ may not be entitled to exemption

17 under this subsection and ~~shall--be~~ are subject to this

18 chapter the same as state banks, provided that such the

19 service is excluded from employment as defined in the

20 Federal Unemployment Tax Act by section 3306(c)(7) of that

21 act;

22 (f) service with respect to which unemployment

23 insurance is payable under an unemployment insurance system

24 established by an act of congress, provided that the

25 department ~~must~~ shall enter into agreements with the proper

1 agencies under such an act of congress, which agreements

2 ~~shall~~ become effective in the manner prescribed in the

3 Montana Administrative Procedure Act for the adoption of

4 rules, to provide reciprocal treatment to individuals who

5 have, after acquiring potential rights to benefits under

6 this chapter, acquired rights to unemployment insurance

7 under such an act of congress or who have, after acquiring

8 potential rights to unemployment insurance under such the

9 act of congress, acquired rights to benefits under this

10 chapter;

11 (g) services performed as a newspaper carrier or

12 free-lance correspondent if the person performing the

13 ~~services or a parent or guardian of the person performing~~

14 ~~the services in the case of a minor~~ has acknowledged in

15 writing that ~~the person performing the services and~~ the

16 services are not covered. As used in this subsection:

17 (i) "free-lance correspondent" is a person who submits

18 articles or photographs for publication and is paid by the

19 article or by the photograph; and

20 (ii) "newspaper carrier" means a person who provides a

21 newspaper with the service of delivering newspapers singly

22 or in bundles. The term does not include an employee of the

23 paper who, incidentally to his the employee's main duties,

24 carries or delivers papers.

25 (h) services performed by real estate, securities, and

1 insurance salespeople paid solely by commissions and without
2 guarantee of minimum earnings;

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

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

1 of employers;

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

4 (l) services performed by a cosmetologist who is
5 licensed under Title 37, chapter 31, or a barber who is
6 licensed under Title 37, chapter 30, and:

7 (i) who has acknowledged in writing that he the
8 cosmetologist or barber is not covered by unemployment
9 insurance and workers' compensation and;

10 (ii) who contracts with a cosmetological establishment
11 as defined in 37-31-101 or a barbershop as defined in
12 37-30-101, which contract ~~shall~~ must show that the
13 cosmetologist or barber;

14 (A) is free from all control and direction of the owner
15 in the contract ~~and-in-fact~~;

16 (B) receives payment for services from ~~his--or-her~~
17 individual clientele; and

18 (C) leases, rents, or furnishes all of ~~his-or--her~~ the
19 cosmetologist's or barber's own equipment, skills, or
20 knowledge; and

21 (iii) whose contract gives rise to an action for breach
22 of contract in the event of contract termination (the
23 existence of a single license for the cosmetological
24 establishment or barbershop ~~shall~~ may not be construed as a
25 lack of freedom from control or direction under this

1 subsection);

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

9 (n) employment of sole proprietors or working members
10 of a partnership;

11 (o) services performed for the installation of floor
12 coverings if the installer:

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

15 (ii) is paid upon completion of an ~~agreed---~~upon
16 agreed-upon portion of the job or after the job is
17 completed;

18 (iii) may perform services for anyone without
19 limitation;

20 (iv) may accept or reject any job;

21 (v) furnishes substantially all tools and equipment
22 necessary to provide the services; and

23 (vi) works under a written contract that:

24 (A) gives rise to a breach of contract action if the
25 installer or any other party fails to perform the contract

1 obligations;

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

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

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

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

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

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

20 (c) in a facility conducted for the purpose of carrying
21 out a program of rehabilitation for individuals whose
22 earning capacity is impaired by age or physical or mental
23 deficiency or injury or providing remunerative work for
24 individuals who, because of their impaired physical or
25 mental capacity, cannot be readily absorbed in the

1 competitive labor market by an individual receiving such
2 rehabilitation or remunerative work;

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

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

10 (4) An individual found to be an independent contractor
11 by the department under the terms of 39-71-401(3) is
12 considered an independent contractor for the purposes of
13 this chapter. An independent contractor is not precluded
14 from filing a claim for benefits and receiving a
15 determination pursuant to 39-51-2402.

16 (5) This section does not apply to a state or local
17 governmental entity or a nonprofit organization defined
18 under section 501(c)(3) of the Internal Revenue Code unless
19 the service is excluded from employment as defined in
20 section-3309(b) of the Federal Unemployment Tax Act."

21 **Section 2.** Section 39-51-1219, MCA, is amended to read:

22 "39-51-1219. Procedures for the substitution, merger,
23 or acquisition of an employer account by a successor
24 employing unit. (1) Subject to the provisions of subsection
25 (3), whenever any individual or organization (whether or not

1 a covered employer) in any manner succeeds to or acquires
2 all or substantially all of the business of an employer who
3 at the time of acquisition was a covered employer and
4 whenever in respect to whom the department finds that the
5 business of the predecessor is continued solely by the
6 successor:

7 (a) the separate account and the actual contribution,
8 benefit, and taxable payroll experience of the predecessor
9 ~~shall~~ must, upon the joint application of the predecessor
10 and the successor within 90 days after such the acquisition
11 and approval by the department, be transferred to the
12 successor employer for the purpose of determining the
13 successor's liability and rate of contribution; and

14 (b) any successor who was not an employer on the date
15 of acquisition becomes a covered employer as of such that
16 date.

17 (2) Whenever any individual or organization (whether or
18 not a covered employer) in any manner succeeds to or
19 acquires part of the business of an employer who at the time
20 of acquisition was a covered employer and whenever such that
21 portion of the business is continued by the successor:

22 (a) so much of the separate account and the actual
23 contribution, benefit, and taxable payroll experience of the
24 predecessor as is attributable to the portion of the
25 business transferred, as determined on a pro rata basis in

1 the same ratio that the wages of covered employees properly
 2 allocable to the transferred portion of the business bear to
 3 the payroll of the predecessor in the last four 4 completed
 4 calendar quarters immediately preceding the date of
 5 transfer, ~~shall~~ must, upon the joint application of the
 6 predecessor and the successor within 90 days after such the
 7 acquisition and approval by the department, be transferred
 8 to the successor employer for the purpose of determining the
 9 successor's liability and rate of contribution; and

10 (b) any successor who was not an employer on the date
 11 of acquisition becomes a covered employer as of such that
 12 date.

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

15 (b) Whenever a predecessor covered employer has a
 16 deficit experience rating account as of the last computation
 17 date, the transfer provided for in subsections (1) and (2)
 18 is mandatory except when it is shown by substantial evidence
 19 that the management, the ownership, or both the management
 20 and ownership are not substantially the same for the
 21 successor as for the predecessor, in which case the
 22 successor shall begin with the rate of a new employer.
 23 Whenever such a mandatory transfer involves only a portion
 24 of the experience rating record and the predecessor or
 25 successor employers fail to supply the required payroll

1 information within 10 days after notice, the transfer ~~shall~~
 2 must be based on estimates of the applicable payrolls. The
 3 successor must be notified in writing of the mandatory
 4 transfer, and unless the mandatory transfer is appealed
 5 within 30 calendar days, the right to appeal is waived.

6 (c) Whenever a predecessor covered employer has an
 7 eligible experience rating account as of the last
 8 computation date and when it is shown by substantial
 9 evidence that the management, the ownership, or both the
 10 management and the ownership are substantially the same for
 11 the successor as for the predecessor, the transfer provided
 12 for in subsections (1) and (2) is automatic. Whenever an
 13 automatic transfer involves only a portion of the experience
 14 rating record and the predecessor or successor employers
 15 fail to supply the required payroll information within 10
 16 days after notification, the transfer must be based on
 17 estimates of the applicable payrolls. The successor must be
 18 notified in writing of the automatic transfer and shall
 19 request within 30 days of notification that the experience
 20 rating account of the predecessor not be transferred.

21 (4) (a) If the successor was a covered employer prior
 22 to the date of the acquisition of all or a part of the
 23 predecessor's business, the successor's rate of
 24 contribution, effective the first day of the calendar year
 25 immediately following the date of acquisition, is based on

1 the combined experience of the predecessor and successor.

2 (b) If the successor was not a covered employer prior
3 to the date of the acquisition of all or a part of the
4 predecessor's business, the successor's rate is the rate
5 applicable to the predecessor with respect to the period
6 immediately preceding the date of acquisition, but if there
7 was more than one predecessor, the successor's rate ~~shall~~
8 must be a newly computed rate based on the combined
9 experience of the predecessors, becoming effective
10 immediately after the date of acquisition and remaining in
11 effect for the balance of the rate year."

12 **Section 3.** Section 39-51-2110, MCA, is amended to read:

13 "39-51-2110. Payment of benefits to aliens. (1)
14 Benefits ~~shall~~ may not be payable paid on the basis of
15 services performed by an alien unless the alien is an
16 individual who was lawfully admitted for permanent residence
17 at the time the services were performed, was lawfully
18 present for the purposes of performing the services, or was
19 permanently residing in the United States under color of law
20 at the time the services were performed, including an alien
21 who was lawfully present in the United States as a result of
22 the application of the provisions of ~~section--203(a)(7)--or~~
23 ~~section 212(d)(5) of the Immigration and Nationality Act.~~

24 (2) Any data or information required of individuals
25 applying for benefits to determine whether benefits are not

1 payable to them the individuals because of their the
2 individuals' alien status ~~shall~~ must be uniformly required
3 from all applicants for benefits.

4 (3) In the case of an individual whose application for
5 benefits would otherwise be approved, ~~no~~ a determination
6 that benefits to such the individual are not payable because
7 of ~~his~~ the individual's alien status ~~shall~~ may not be made
8 except upon a preponderance of the evidence."

9 **Section 4.** Section 39-51-2203, MCA, is amended to read:

10 "39-51-2203. Reduction of benefits because of amounts
11 received from certain other sources. (1) Claimant's An
12 individual's weekly benefit amount ~~shall~~ must be reduced
13 (but not below zero) by the amount that he the individual is
14 receiving from in the form of a governmental or other
15 pension, retirement pay, annuity, or other similar periodic
16 payment which that is based on the previous work for--and
17 entirely-contributed-to-by-a-base-period-employer.

18 {2}--However,---if---the---service---performed--for--the
19 base-period-employer-does-not-affect-either-the--eligibility
20 for-or-the-amount-of-the-pension-or-other-type-of-retirement
21 benefit--received-from-the-plan-maintained-or-contributed-to
22 by-the-base-period-employer,--the--reduction--requirement--of
23 subsection-{1}-does-not-apply.

24 {3}--The--exception--in-subsection-{2}-is-not-applicable
25 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, of the individual and that is reasonably attributable to the week if:~~

~~(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and~~

~~(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.~~

~~(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution. A PENSION PLAN NEGOTIATED UNDER A COLLECTIVE BARGAINING AGREEMENT IS CONSIDERED A DIRECT EMPLOYEE CONTRIBUTION UNDER THIS SECTION."~~

Section 5. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits -- disqualifications -- acceptance of suitable work. (1) An individual ~~shall be~~ is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such the week that the individual:

(a) he is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

~~{b}--he~~ (c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he ~~is~~ disqualified, he the individual satisfies the requirements for requalification in that part; and

~~{c}--he~~ (d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection ~~{1}{b}~~ {1}{c}, an individual is disqualified for extended benefits if he the individual fails to seek

work. Such The disqualification continues for the week in which such the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless he the individual has earned at least eight times the weekly benefit amount after the date of such the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), regualifies for regular benefits may not be paid extended benefits unless he the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". Such The definition shall must be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981."

Section 6. Section 39-51-3105, MCA, is amended to read:

"39-51-3105. Assignment, pledge, or encumbrance of

right to benefits void -- benefits exempt from levy, execution, attachment, or other remedy for collection of debt -- exception. Any assignment, pledge, or encumbrance of any right to benefits which that are or may become due or payable under this chapter ~~shall-be~~ is void, and such the rights to benefits ~~shall-be~~ are exempt from levy, execution, attachment, or any other remedy ~~whatsoever~~ provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, ~~shall-be~~ are exempt from any remedy ~~whatsoever~~ for the collection of all debts except as provided in 39-51-3106 and 39-51-3206. Any waiver of any exemption provided for in this section ~~shall-be~~ is void."

SECTION 7. SECTION 39-51-3206, MCA, IS AMENDED TO READ:

"39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the

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

10 NEW SECTION. **Section 8. Severability.** If a part of
 11 [this act] is invalid, all valid parts that are severable
 12 from the invalid part remain in effect. If a part of [this
 13 act] is invalid in one or more of its applications, the part
 14 remains in effect in all valid applications that are
 15 severable from the invalid applications.

16 NEW SECTION. **Section 9. Effective date.** [This act] is
 17 effective on passage and approval.

-End-

1 SENATE BILL NO. 184

2 INTRODUCED BY BLAYLOCK, BENEDICT, KEATING

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
6 CLARIFYING THE UNEMPLOYMENT INSURANCE LAWS; PROHIBITING A
7 PARENT OR GUARDIAN FROM WAIVING ANOTHER'S RIGHTS TO
8 UNEMPLOYMENT BENEFITS; CLARIFYING THE DEPARTMENT'S
9 RESPONSIBILITY FOR REVIEWING AND ISSUING DETERMINATIONS ON
10 AN INDIVIDUAL'S EMPLOYMENT STATUS WHEN AN UNEMPLOYMENT
11 BENEFITS CLAIM IS FILED; CLARIFYING THAT THE EXCLUSIONS FROM
12 EMPLOYMENT DO NOT APPLY TO A GOVERNMENTAL ENTITY OR A
13 NONPROFIT ORGANIZATION UNLESS EXCLUDED UNDER THE FEDERAL
14 UNEMPLOYMENT TAX ACT; ALLOWING TRANSFER OF AN ELIGIBLE
15 EXPERIENCE RATING; REMOVING REFERENCE TO SECTION 203(A) OF
16 THE FEDERAL IMMIGRATION AND NATIONALITY ACT; REVISING
17 REDUCTION OF BENEFITS BECAUSE OF THE AMOUNT RECEIVED FROM
18 CERTAIN OTHER SOURCES TO REFLECT FEDERAL REQUIREMENTS FOR
19 THE OFFSET OF BENEFITS DUE TO A PENSION RECEIPT; CLARIFYING
20 THE DEPARTMENT'S AUTHORITY TO COLLECT OVERPAYMENTS THROUGH
21 THE OFFSET OF CURRENT BENEFIT ENTITLEMENTS; SPECIFYING WAGES
22 THAT QUALIFY AS EXTENDED BENEFITS; AMENDING SECTIONS
23 39-51-204, 39-51-1219, 39-51-2110, 39-51-2203, 39-51-2508,
24 AND 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN
25 IMMEDIATE EFFECTIVE DATE."

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

2 Section 1. Section 39-51-204, MCA, is amended to read:

3 "39-51-204. Exclusions from definition of employment.

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

5 (a) agricultural labor, except as provided in
6 39-51-202(2). If an employer is otherwise subject to this
7 chapter and has agricultural employment, all employees
8 engaged in agricultural labor must be excluded from coverage
9 under this chapter if the employer:

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

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

16 (b) household and domestic service in a private home,
17 local college club, or local chapter of a college fraternity
18 or sorority, except as provided in 39-51-202(3). If an
19 employer is otherwise subject to this chapter and has
20

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 184 (third reading copy -- blue) be concurred in as amended .

Signed: 
Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Benedict

1. Title, lines 6 through 8.

Following: ";" on line 6

Strike: the remainder of line 6 through ";" on line 8

2. Page 4, line 14.

Following: "~~minor~~"

Insert: "or a parent or guardian of the person performing the services in the case of a minor"

3. Page 4, line 15.

Following: "~~and~~"

Insert: "the person performing the services and"

-END-

Committee Vote:
Yes 16, No 0.

HOUSE

SB 184

SENATE BILL NO. 184

INTRODUCED BY BLAYLOCK, BENEDICT, KEATING

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE UNEMPLOYMENT INSURANCE LAWS; ~~PROHIBITING-A PARENT-OR-GUARDIAN--FROM--WAIVING--ANOTHER'S---RIGHTS---TO UNEMPLOYMENT----~~BENEFITS; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY FOR REVIEWING AND ISSUING DETERMINATIONS ON AN INDIVIDUAL'S EMPLOYMENT STATUS WHEN AN UNEMPLOYMENT BENEFITS CLAIM IS FILED; CLARIFYING THAT THE EXCLUSIONS FROM EMPLOYMENT DO NOT APPLY TO A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION UNLESS EXCLUDED UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ALLOWING TRANSFER OF AN ELIGIBLE EXPERIENCE RATING; REMOVING REFERENCE TO SECTION 203(A) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT; REVISING REDUCTION OF BENEFITS BECAUSE OF THE AMOUNT RECEIVED FROM CERTAIN OTHER SOURCES TO REFLECT FEDERAL REQUIREMENTS FOR THE OFFSET OF BENEFITS DUE TO A PENSION RECEIPT; CLARIFYING THE DEPARTMENT'S AUTHORITY TO COLLECT OVERPAYMENTS THROUGH THE OFFSET OF CURRENT BENEFIT ENTITLEMENTS; SPECIFYING WAGES THAT QUALIFY AS EXTENDED BENEFITS; AMENDING SECTIONS 39-51-204, 39-51-1219, 39-51-2110, 39-51-2203, 39-51-2508, AND 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) 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

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

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject

wages attributable to domestic service; and

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

(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~~ may not be entitled to exemption under this subsection and ~~shall--be~~ are subject to this chapter the same as state banks, provided that ~~such the~~ 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~~ shall enter into agreements with the proper

agencies under ~~such~~ an 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~~ an act of congress or who have, after acquiring potential rights to unemployment insurance under ~~such the~~ act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services ~~or-a-parent-or-guardian-of--the--person--performing the--services-in-the-case-of-a-minor~~ OR A PARENT OR GUARDIAN OF THE PERSON PERFORMING THE SERVICES IN THE CASE OF A MINOR has acknowledged in writing that ~~the-person--performing--the services--and~~ THE PERSON PERFORMING THE SERVICES AND the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to his ~~the employee's~~ main duties,

1 carries or delivers papers.

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

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

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

1 subsection ~~shall~~ does not apply to service performed in a
2 program established for or on behalf of an employer or group
3 of employers;

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

6 (l) services performed by a cosmetologist who is
7 licensed under Title 37, chapter 31, or a barber who is
8 licensed under Title 37, chapter 30, and:

9 (i) who has acknowledged in writing that he the
10 cosmetologist or barber is not covered by unemployment
11 insurance and workers' compensation and;

12 (ii) who contracts with a cosmetological establishment
13 as defined in 37-31-101 or a barbershop as defined in
14 37-30-101, which contract ~~shall~~ must show that the
15 cosmetologist or barber;

16 (A) is free from all control and direction of the owner
17 in the contract ~~and-in-fact~~;

18 (B) receives payment for services from ~~his--or--her~~
19 individual clientele; and

20 (C) leases, rents, or furnishes all of ~~his-or-her~~ the
21 cosmetologist's or barber's own equipment, skills, or
22 knowledge; and

23 (iii) whose contract gives rise to an action for breach
24 of contract in the event of contract termination (the
25 existence of a single license for the cosmetological

1 establishment or barbershop ~~shall~~ may not be construed as a
 2 lack of freedom from control or direction under this
 3 subsection);

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

11 (n) employment of sole proprietors or working members
 12 of a partnership;

13 (o) services performed for the installation of floor
 14 coverings if the installer:

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

17 (ii) is paid upon completion of an agreed--upon
 18 agreed-upon portion of the job or after the job is
 19 completed;

20 (iii) may perform services for anyone without
 21 limitation;

22 (iv) may accept or reject any job;

23 (v) furnishes substantially all tools and equipment
 24 necessary to provide the services; and

25 (vi) works under a written contract that:

1 (A) gives rise to a breach of contract action if the
 2 installer or any other party fails to perform the contract
 3 obligations;

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

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

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

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

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

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

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

1 individuals who, because of their impaired physical or
2 mental capacity, cannot be readily absorbed in the
3 competitive labor market by an individual receiving such
4 rehabilitation or remunerative work;

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

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

12 (4) An individual found to be an independent contractor
13 by the department under the terms of 39-71-401(3) is
14 considered an independent contractor for the purposes of
15 this chapter. An independent contractor is not precluded
16 from filing a claim for benefits and receiving a
17 determination pursuant to 39-51-2402.

18 (5) This section does not apply to a state or local
19 governmental entity or a nonprofit organization defined
20 under section 501(c)(3) of the Internal Revenue Code unless
21 the service is excluded from employment as defined in
22 section-3309(b)-of the Federal Unemployment Tax Act."

23 **Section 2.** Section 39-51-1219, MCA, is amended to read:

24 "39-51-1219. Procedures for the substitution, merger,
25 or acquisition of an employer account by a successor

1 employing unit. (1) Subject to the provisions of subsection
2 (3), whenever any individual or organization (whether or not
3 a covered employer) in any manner succeeds to or acquires
4 all or substantially all of the business of an employer who
5 at the time of acquisition was a covered employer and
6 whenever in respect to whom the department finds that the
7 business of the predecessor is continued solely by the
8 successor:

9 (a) the separate account and the actual contribution,
10 benefit, and taxable payroll experience of the predecessor
11 ~~shall~~ must, upon the joint application of the predecessor
12 and the successor within 90 days after ~~such~~ the acquisition
13 and approval by the department, be transferred to the
14 successor employer for the purpose of determining the
15 successor's liability and rate of contribution; and

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

19 (2) Whenever any individual or organization (whether or
20 not a covered employer) in any manner succeeds to or
21 acquires part of the business of an employer who at the time
22 of acquisition was a covered employer and whenever ~~such~~ that
23 portion of the business is continued by the successor:

24 (a) so much of the separate account and the actual
25 contribution, benefit, and taxable payroll experience of the

predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last four 4 completed calendar quarters immediately preceding the date of transfer, ~~shall~~ must, upon the joint application of the predecessor and the successor within 90 days after such ~~the~~ acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

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

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

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such ~~a~~ mandatory transfer involves only a portion

of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer ~~shall~~ must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.

(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of

contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

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

Section 3. Section 39-51-2110, MCA, is amended to read:

"39-51-2110. **Payment of benefits to aliens.** (1) Benefits ~~shall~~ may not be payable paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section-203(a)(7)-or~~ section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to ~~them~~ the individuals because of ~~their~~ the individuals' alien status ~~shall~~ must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, ~~no~~ a determination that benefits to ~~such~~ the individual are not payable because of ~~his~~ the individual's alien status ~~shall~~ may not be made except upon a preponderance of the evidence."

Section 4. 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~~ An individual's weekly benefit amount ~~shall~~ must be reduced (but not below zero) by the amount that ~~he~~ the individual is receiving from in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment which that is based on the previous work for-and entirely-contributed-to-by-a-base-period-employer-

~~(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, of the individual and that is reasonably attributable to the week if:~~

~~(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and~~

~~(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.~~

~~(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution. A PENSION PLAN NEGOTIATED UNDER A COLLECTIVE BARGAINING AGREEMENT IS CONSIDERED A DIRECT EMPLOYEE CONTRIBUTION UNDER THIS~~

SECTION."

Section 5. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits -- disqualifications -- acceptance of suitable work. (1) An individual ~~shall~~ is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such the week that the individual:

(a) he is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

~~(b)--he (c)~~ is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he ~~is~~ disqualified, he the individual satisfies the requirements for requalification in that part; and

~~(c)--he (d)~~ has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for

1 in subsection ~~(1)(b)~~ (1)(c), an individual is disqualified
 2 for extended benefits if he the individual fails to seek
 3 work. ~~Such~~ The disqualification continues for the week in
 4 which ~~such~~ the failure occurs and until the individual has
 5 performed services, other than self-employment, for which
 6 remuneration is received equal to or in excess of ~~his~~ the
 7 individual's weekly benefit amount in 4 separate weeks
 8 subsequent to the date the act causing the disqualification
 9 occurred.

10 (3) A regular benefit claimant who is disqualified for
 11 gross misconduct under 39-51-2303(2) may not be paid
 12 extended benefits unless he the individual has earned at
 13 least eight times the weekly benefit amount after the date
 14 of ~~such~~ the disqualification.

15 (4) A regular benefit claimant who voluntarily leaves
 16 work to attend school and, pursuant to 39-51-2302(3),
 17 requalifies for regular benefits may not be paid extended
 18 benefits unless he the individual has earned at least six
 19 times the weekly benefit amount.

20 (5) For the purposes of determining eligibility for
 21 extended benefits, the department shall by rule define the
 22 term "suitable work". ~~Such~~ The definition ~~shall~~ must be in
 23 accordance with the definition required by the Omnibus
 24 Reconciliation Act of 1980, P.L. 96-499, and as may be
 25 amended after March 19, 1981."

1 **Section 6.** Section 39-51-3105, MCA, is amended to read:

2 "39-51-3105. Assignment, pledge, or encumbrance of
 3 right to benefits void -- benefits exempt from levy,
 4 execution, attachment, or other remedy for collection of
 5 debt -- exception. Any assignment, pledge, or encumbrance of
 6 any right to benefits ~~which~~ that are or may become due or
 7 payable under this chapter ~~shall-be~~ is void, and ~~such~~ the
 8 rights to benefits ~~shall-be~~ are exempt from levy, execution,
 9 attachment, or any other remedy ~~whatsoever~~ provided for the
 10 collection of debt, and benefits received by any individual,
 11 so long as they are not mingled with other funds of the
 12 recipient, ~~shall--be~~ are exempt from any remedy ~~whatsoever~~
 13 for the collection of all debts except as provided in
 14 39-51-3106 and 39-51-3206. Any waiver of any exemption
 15 provided for in this section ~~shall-be~~ is void."

16 **SECTION 7.** SECTION 39-51-3206, MCA, IS AMENDED TO READ:

17 "39-51-3206. Collection of benefit overpayments. A
 18 person who receives benefits not authorized by this chapter
 19 shall repay to the department either directly or, as
 20 authorized by the department, by offset of future benefits
 21 to which the claimant may be entitled, or by a combination
 22 of both methods, a sum equal to the amount of the
 23 overpayment. A benefit offset may not exceed 50% of the
 24 weekly benefits to which a claimant is entitled unless the
 25 claimant gives written consent. The sum is collectible in

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

12 NEW SECTION. **Section 8. Severability.** If a part of
13 [this act] is invalid, all valid parts that are severable
14 from the invalid part remain in effect. If a part of [this
15 act] is invalid in one or more of its applications, the part
16 remains in effect in all valid applications that are
17 severable from the invalid applications.

18 NEW SECTION. **Section 9. Effective date.** [This act] is
19 effective on passage and approval.

-End-