

SENATE BILL 274

Introduced by Keating, et al.

1/29	Introduced
1/29	Referred to Labor & Employment Relations
1/29	First Reading
1/29	Fiscal Note Requested
2/04	Fiscal Note Received
2/06	Fiscal Note Printed
2/16	Hearing
2/22	Tabled in Committee

1 *Senate* BILL NO. *274*
 2 INTRODUCED BY *Katherine Beck*
 3 *Katherine Beck*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING TIPS FROM
 5 WAGES SUBJECT TO PAYMENT OF WORKERS' COMPENSATION PREMIUMS
 6 AND UNEMPLOYMENT INSURANCE TAX; AMENDING SECTIONS 39-51-201
 7 AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE."
 8

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

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

11 "39-51-201. General definitions. As used in this
 12 chapter, unless the context clearly requires otherwise, the
 13 following definitions apply:

14 (1) "Annual payroll" means the total amount of wages
 15 paid by an employer, regardless of the time of payment, for
 16 employment during a calendar year.

17 (2) "Base period" means the first four of the last five
 18 completed calendar quarters immediately preceding the first
 19 day of an individual's benefit year. However, in the case of
 20 a combined-wage claim pursuant to the arrangement approved
 21 by the secretary of labor of the United States, the base
 22 period ~~shall~~ must be that applicable under the unemployment
 23 law of the paying state. For an individual who fails to meet
 24 the qualifications of 39-51-2105 or a similar statute of
 25 another state due to a temporary total disability as defined

1 in 39-71-116 or a similar statute of another state or the
 2 United States, the base period means the first four quarters
 3 of the last five quarters preceding the disability if a
 4 claim for unemployment benefits is filed within 24 months of
 5 the date on which the individual's disability was incurred.

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

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

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

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

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

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

6 (9) "Employing unit" means any individual or
7 organization, including the state government, any of its
8 political subdivisions or instrumentalities, any
9 partnership, association, trust, estate, joint-stock
10 company, insurance company, or corporation, whether domestic
11 or foreign, or the receiver, trustee in bankruptcy, trustee
12 or successor thereof, or the legal representative of a
13 deceased person which that has or had in its employ one or
14 more individuals performing services for it within this
15 state, except as provided under 39-51-204(1)(a) and (1)(b).
16 All individuals performing services within this state for
17 any employing unit which maintains two or more separate
18 establishments within this state are considered to be
19 employed by a single employing unit for all the purposes of
20 this chapter. Each individual employed to perform or assist
21 in performing the work of any agent or employee of an
22 employing unit is ~~deemed~~ considered to be employed by such
23 the employing unit for the purposes of this chapter, whether
24 such the individual was hired or paid directly by such the
25 employing unit or by such the agent or employee, provided

1 the employing unit has actual or constructive knowledge of
2 the work.

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

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

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

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

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

25 (a) has been and will continue to be free from control

1 or direction over the performance of the services, both
2 under his the individual's contract and in fact; and

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

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

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

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

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

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

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

24 (16) "State" includes, in addition to the states of the
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Taxes" means contributions and assessments
3 required under this chapter but does not include penalties
4 or interest for past-due or unpaid contributions or
5 assessments.

6 (18) "Unemployment insurance administration fund" means
7 the unemployment insurance administration fund established
8 by this chapter from which administrative expenses under
9 this chapter shall be paid.

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

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

19 (i) the amount of any payment made by the employer, if
20 the payment was made under a plan established for the
21 employees in general or for a specific class or classes of
22 employees, to or on behalf of the employee for:

23 (A) retirement;

24 (B) sickness or accident disability under a workers'
25 compensation law;

(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 the county welfare office; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iv) tips and other gratuities received by the employee.

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

(21) 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 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its

actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee ~~in--excess--of--those--documented--to--the--employer--for--tax purposes;~~

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of

1 the four pay periods does not accurately reflect the
2 claimant's employment history with the employer, in which
3 case the insurer may use additional pay periods.

4 (4) (a) For the purpose of calculating compensation
5 benefits for an employee working concurrent employments, the
6 average actual wages must be calculated as provided in
7 subsection (3).

8 (b) The compensation benefits for a covered volunteer
9 must be based on the average actual wages in his the
10 volunteer's regular employment, except self-employment as a
11 sole proprietor or partner who elected not to be covered,
12 from which he the volunteer is disabled by the injury
13 incurred.

14 (c) The compensation benefits for an employee working
15 at two or more concurrent remunerated employments must be
16 based on the aggregate of average actual wages of all
17 employments, except self-employment as a sole proprietor or
18 partner who elected not to be covered, from which the
19 employee is disabled by the injury incurred.

20 (5) The compensation benefits and the payroll, for
21 premium purposes, for a volunteer firefighter covered
22 pursuant to 39-71-118(4) must be based upon a wage of not
23 less than \$900 a month and not more than 1 1/2 times the
24 average weekly wage as defined in this chapter."

25 NEW SECTION. **Section 3.** Effective date. [This act] is

1 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0274, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act excluding tips from wages subject to payment of workers' compensation premiums and unemployment insurance tax; amending sections; and providing an effective date.

ASSUMPTIONS:

Department of Labor and Industry

1. The proposal would exclude tips from Montana unemployment insurance taxes and therefore exclude the tips for use in determining a claimant's unemployment insurance benefit amount. Federal Unemployment Tax Account (FUTA) taxes would continue to be collected on tip income.
2. The department does not have information available to determine the amount of tip income currently being reported.

State Comp Mutual Insurance Fund

1. A majority of the loss in premiums collected, due to the reduction in wages by excluding tips and gratuities, should be offset by a reduction in compensation benefit paid to injured workers.
2. This bill will not affect medical benefits.
3. The rate making process would adjust classification code rates to acknowledge a reduction in wages (payroll) from the exclusion of tips and gratuities.
4. Revisions to the Payroll and Premium Report instruction form and the form to advise all policyholders of new definition of wages will be necessary.
5. The State Fund would issue a general notification to all policyholders of revisions.

FISCAL IMPACT:

Expenditures:

Department of Labor and Industry

Benefit payments would be reduced by an unknown amount. Some claimant's benefit amounts would be reduced because tip income would no longer be considered covered wages for use in the calculation.

(continued)

David Lewis 2-4-93

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

Thomas F. Keating 2/6/93
THOMAS F. KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0274, as introduced

SB 274

FISCAL IMPACT:

State Comp Mutual Insurance Fund

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	224.50	224.50	0.00	227.50	227.50	0.00
Personal Services	6,498,681	6,498,681	0	6,584,924	6,584,924	0
Operating Expenses	3,615,187	3,622,911	7,724	3,922,172	3,922,172	0
Equipment	310,066	310,066	0	236,597	236,597	0
Benefits and Claims	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	<u>134,256</u>	<u>134,256</u>	<u>0</u>	<u>221,580</u>	<u>221,580</u>	<u>0</u>
Total	179,425,443	179,433,167	7,724	196,630,433	196,630,433	0

An inestimable, but probably minor reduction in compensation payments would occur. There would be no change in medical benefit payments.

Revenues:

Department of Labor and Industry

Revenue to the unemployment insurance trust fund would be reduced by an unknown, but probably minor amount because tips would no longer be taxed.

State Comp Mutual Insurance Fund

Total revenues will decline by the level of premium associated with the excluded tips and gratuities. This decline in revenue cannot be determined but is expected to be minor.

TECHNICAL NOTES:

Employers would continue to be required to pay FUTA taxes on tips. The exclusion of tips from the taxable wage base would place the state in noncompliance with federal requirements. Employers' FUTA taxes on the tip income would increase to 6.2% from the current 0.8%, up to the \$7,000 FUTA wage base.