

House BILL NO. 100INTRODUCED BY Janette McKee

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203, 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104, 39-51-2203, 39-51-2307, 39-51-2403, 39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

Section 1. Section 13-4-106, MCA, is amended to read:

"13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges ~~shall~~ must be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. ~~Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter.~~

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county

1 governing body as soon after an election as all records necessary for ~~such~~ the certification are received."

2

3 **Section 2.** Section 39-51-201, MCA, is amended to read:

4 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
5 otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

23 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
24 for which an individual has been convicted in a criminal court or has admitted or conduct ~~which~~ that
25 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
26 or the employer.

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

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

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

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

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

6 (i) admits as regular students only individuals having a certificate of graduation from a high school
7 or the recognized equivalent of ~~such~~ a certificate;

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

9 (iii) provides an educational program for which it awards a bachelor's or higher degree or provides
10 a program ~~which~~ that is acceptable for full credit toward ~~such~~ a bachelor's or higher degree, a program of
11 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment
12 in a recognized occupation; and

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

14 (b) Notwithstanding ~~any of the foregoing provisions of this subsection~~ (15)(a), all ~~colleges and~~
15 universities in this state are institutions of higher education for purposes of this part.

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

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

20 (18) "Unemployment insurance administration fund" means the unemployment insurance
21 administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~
22 must be paid.

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

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

29 (i) the amount of any payment made by the employer, if the payment was made under a plan
30 established for the employees in general or for a specific class or classes of employees, to or on behalf of

1 the employee for:

2 (A) retirement;

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

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

5 (D) death;

6 (ii) remuneration paid by ~~any~~ a county welfare office from public assistance funds for services
7 performed at the direction and request of ~~such~~ the county welfare office; or

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

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

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

13

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

15 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
16 means service by an individual, by a manager or member of a manager-managed limited liability company
17 that has filed with the secretary of state, or by an officer of a corporation, including service in interstate
18 commerce, performed for wages or under any contract of hire, written or oral, express or implied.

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

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

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

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

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

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

28 (i) the service is performed entirely within ~~such~~ the state; or

29 (ii) the service is performed both within and ~~without~~ such outside the state, but the service
30 performed ~~without~~ such outside the state is incidental to the individual's service within the state; for

1 example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

2 (3) Service not covered under subsection (2) ~~of this section~~ and performed entirely ~~without this~~
 3 outside the state ~~with respect to no part of~~ and on which contributions are neither required ~~and~~ nor paid
 4 under an unemployment insurance law of any other state or of the federal government is considered to be
 5 employment subject to this chapter if the individual performing ~~such the~~ the services is a resident of this state
 6 and the department approves the election of the employing unit for whom ~~such the~~ the services are performed
 7 in order that the entire service of ~~such the~~ the individual is considered to be employment subject to this
 8 chapter.

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

12 (5) The term "employment" includes service performed by an individual in the employ of this state
 13 or any of its instrumentalities (or in the employ of this state and one or more other states or their
 14 instrumentalities) for a hospital or institution of higher education located in this state. The term
 15 "employment" includes service performed by all individuals, including ~~without limitations~~ those individuals
 16 who work for the state of Montana, its universities, ~~any of its colleges,~~ public schools, components or units
 17 ~~thereof~~ of universities or public schools, or any local government unit and one or more other states or their
 18 instrumentalities or political subdivisions whose services are compensated by salary or wages.

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

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

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

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

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

28 (B) the employer is a corporation ~~which that~~ that is organized under the laws of this state; or

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

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

4 (b) An "American employer", for purposes of this subsection (7), means a person who is:

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

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

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

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

9
 10 **Section 4.** Section 39-51-204, MCA, is amended to read:

11 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
 12 include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (ii) who contracts with a cosmetology salon as defined in 37-31-101 or a barbershop as defined
15 in 37-30-101, which contract must show that the cosmetologist or barber:

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

17 (B) receives payment for services from individual clientele; and

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

20 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination
21 (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack
22 of freedom from control or direction under this subsection);

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

27 (n) employment of sole proprietors ~~or~~, working members of a partnership, or members of a
28 member-managed limited liability company that has filed with the secretary of state;

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

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

- 1 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 2 (iii) may perform services for anyone without limitation;
- 3 (iv) may accept or reject any job;
- 4 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 5 (vi) works under a written contract that:
- 6 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 7 contract obligations;
- 8 (B) states that the installer is not covered by unemployment insurance; and
- 9 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 10 exemption from workers' compensation requirements.
- 11 (2) "Employment" does not include elected public officials.
- 12 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 13 (a) in the employ of a church or convention or association of churches or an organization that is
- 14 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 15 supported by a church or convention or association of churches;
- 16 (b) by ~~a~~ duly an ordained, commissioned, or licensed minister of a church in the exercise of the
- 17 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 18 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 19 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 20 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
- 21 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
- 22 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
- 23 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
- 24 receiving work relief or work training; or
- 25 (e) for a state prison or other state correctional or custodial institution by an inmate of that
- 26 institution.
- 27 (4) An individual found to be an independent contractor by the department under the terms of
- 28 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
- 29 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
- 30 39-51-2402.

1 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
 2 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
 3 employment as defined in the Federal Unemployment Tax Act."
 4

5 **Section 5.** Section 39-51-603, MCA, is amended to read:

6 **"39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep
 7 true and accurate work records containing ~~such the~~ information ~~as that~~ the department may prescribe.
 8 Those records ~~shall must~~ be open to inspection and audit and ~~shall be subject to being~~ may be copied by
 9 the department or its authorized representative at any reasonable time and as often as may be necessary.
 10 An employing unit that maintains its records outside Montana shall furnish a copy of those records to the
 11 department at the employing unit's expense or shall pay the department for the costs associated with
 12 conducting the audit outside Montana.

13 (2) The department and the ~~chairman~~ presiding officer of any appeal tribunal may require from any
 14 employing unit any sworn or unsworn reports with respect to persons employed by it ~~which that~~ the
 15 department considers necessary ~~to for~~ the effective administration of this chapter.

16 (3) Information ~~thus obtained or~~ obtained from any individual under this chapter ~~shall must~~, except
 17 to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential
 18 and ~~shall may~~ not be published or be open to public inspection, except to public employees in the
 19 performance of their public duties, in any manner revealing the individual's or employing unit's identity, but
 20 any claimant or ~~his~~ the claimant's legal representative at a hearing before the board or appeal tribunal ~~shall~~
 21 must be supplied with information from the records to the extent necessary for the proper presentation of
 22 ~~his~~ the claim.

23 (4) Any employee or member of the department who violates any provision of this section shall
 24 be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both."
 25

26 **Section 6.** Section 39-51-1105, MCA, is amended to read:

27 **"39-51-1105. Liability of corporate officers, managers, or members of limited liability company for**
 28 **taxes, penalties, and interest owed by corporation or company.** (1) When a corporation subject to
 29 Montana corporate law or a limited liability company ~~has failed~~ fails to file the annual corporation or
 30 company report with the Montana secretary of state as required by law, the department shall hold the

1 president, ~~vice president~~ vice president, secretary, and treasurer or the managers of a manager-managed
 2 limited liability company jointly and severally liable for any taxes, penalties, and interest due for the period
 3 in which the corporation or company is delinquent in filing the annual corporation or company report. If
 4 the required annual corporation or company report is made and filed after the time specified, ~~such the~~
 5 officers or managers may not, on account of prior failure to make report, be held liable for the taxes,
 6 penalties, and interest ~~thereafter~~ accruing after making the report.

7 (2) For determining liability for taxes, penalties, and interest owed, a member-managed limited
 8 liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed
 9 extending to each member."

10
 11 **Section 7.** Section 39-51-1109, MCA, is amended to read:

12 **"39-51-1109. Tax appeals -- procedure.** A decision, determination, or redetermination of the
 13 department involving contribution liability, contribution rate, application for refund, employment status, or
 14 the charging of benefit payments to employers making payment in lieu of contributions is final unless an
 15 interested party entitled to ~~notice thereof applies for an appeal to an appeals referee~~ notification submits
 16 a written appeal of the decision, determination, or redetermination. The appeal must be made in the same
 17 manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment
 18 insurance benefits. Statutory rules of evidence and civil procedure do not apply to ~~hearings in a hearing~~
 19 on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the
 20 appeals referee and any subsequent appeal ~~therefrom~~ must be made in the same manner as prescribed in
 21 39-51-2403 through 39-51-2410."

22
 23 **Section 8.** Section 39-51-1301, MCA, is amended to read:

24 **"39-51-1301. Penalty and interest on past-due taxes.** (1) Taxes unpaid on the date on which they
 25 are due and payable, as provided by ~~subsections (1) and (2) of 39-51-1103 (1) and (2) and 39-51-1125,~~
 26 that are paid by the end of the month following the due date ~~shall be~~ are subject to a penalty assessment
 27 of \$10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month
 28 following the due date, the employer ~~shall be~~ is subject to a penalty assessment of \$15 or 15% of the taxes
 29 due, whichever is greater. All past-due taxes ~~shall~~ bear interest at the rate of 18% a year, to be prorated
 30 on a daily basis.

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

4 (3) There is an account in the federal special revenue fund. Penalties and interest collected under
 5 this section must be deposited in that account. Money deposited in that account and appropriated to the
 6 department may only be used by the department to administer this chapter, ~~to fund apprenticeship~~
 7 ~~instruction programs pursuant to 39-6-103, and to detect~~ including the detection and collect collection of
 8 unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts
 9 appropriated for this purpose. Money in the account not appropriated for these purposes must be
 10 transferred by the department to the unemployment insurance trust fund at the end of each ~~biennium~~ fiscal
 11 year.

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

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

17
 18 **Section 9.** Section 39-51-1303, MCA, is amended to read:

19 "**39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
 20 liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105
 21 defaults in any payment of taxes, penalties, or interest ~~thereon~~, the department may ~~at its discretion~~
 22 a civil action in the name of the ~~Montana~~ department of labor and industry to collect the amount due, and
 23 the employer, liable corporate officer, or liable member or manager of a limited liability company referred
 24 to in 39-51-1105 adjudged in default shall pay the costs of ~~such~~ the action.

25 (2) An action for the collection of taxes due must be brought within 5 years after the due date of
 26 ~~such~~ the taxes or it is barred.

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

29
 30 **Section 10.** Section 39-51-1304, MCA, is amended to read:

1 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
 2 penalties and interest assessed ~~thereon~~ on unpaid taxes, have the effect of a judgment against the
 3 employer, liable corporate officer, or liable member or manager of a limited liability company referred to in
 4 39-51-1105, arising at the time ~~such that~~ the payments are due. The department may issue a certificate
 5 ~~setting forth~~ stating the amount of payments due and directing the clerk of the district court of any county
 6 of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that
 7 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the
 8 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce
 9 the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at
 10 any time within 10 years of the creation of the lien.

11 (2) The lien provided for in subsection (1) is not valid against any third party owning an interest
 12 in real or personal property against which the judgment is enforced if:

13 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

14 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
 15 that all taxes, penalties, and interest due from the grantor have been paid.

16 (3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
 17 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
 18 against the employer, liable corporate officer, or liable member or manager of a limited liability company
 19 referred to in 39-51-1105 under ~~this section~~ or 39-51-1303 or this section, or both, to collect the
 20 delinquent taxes, penalties, and interest.

21 (4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
 22 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
 23 upon partial payment or whenever the department determines that the release or partial release of the lien
 24 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
 25 it determines that the lien is unenforceable."

26

27 **Section 11.** Section 39-51-2104, MCA, is amended to read:

28 **"39-51-2104. General benefit eligibility conditions.** (1) An unemployed individual is eligible to
 29 receive benefits for any week of total unemployment within the individual's benefit year only if the
 30 department finds that the individual:

1 ~~(1)(a)~~ has filed a claim at and has continued to report at an employment office in accordance with
 2 rules ~~as that~~ the department may prescribe, except that the department may by rule prescribe that in cases
 3 in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an
 4 unemployed individual may file a claim and report for work by mail or through other governmental agencies;

5 ~~(2)(b)~~ is able to work, is available for work, and is seeking work. A claimant is not considered
 6 ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the
 7 failure is ~~due to~~ because of:

8 ~~(a)(i)~~ an illness or disability that occurs after the claimant has registered for work and suitable work
 9 has not been offered to the claimant after the beginning of the illness or disability; or

10 ~~(b)(ii)~~ enrollment as a student as provided in 39-51-2307.

11 ~~(3)(c)~~ prior to the first week for which the individual is paid benefits, has been totally unemployed
 12 for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes
 13 of this subsection:

14 ~~(a)(i)~~ if benefits have been paid for that week;

15 ~~(b)(ii)~~ unless the individual was eligible for benefits during the week;

16 ~~(c)(iii)~~ unless it occurs within the benefit year of the claimant;

17 ~~(d)(iv)~~ unless it occurs after benefits first could become payable to any individual under this chapter.

18 ~~(2) (a) The department shall establish a profiling system to identify individuals who are likely to~~
 19 ~~exhaust their regular benefits and who are in need of reemployment services.~~

20 ~~(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to~~
 21 ~~subsection (2)(a) may be required to participate in reemployment services in order to be eligible for~~
 22 ~~unemployment benefits.~~

23 ~~(c) The requirement for participation in reemployment services may be waived if the department~~
 24 ~~determines that:~~

25 ~~(i) the individual has completed reemployment services; or~~

26 ~~(ii) the individual's failure to participate in reemployment services is justifiable."~~

27
 28 **Section 12.** Section 39-51-2203, MCA, is amended to read:

29 "**39-51-2203. Reduction of benefits because of amounts received from certain other sources.** (1)

30 An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the

1 individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other
 2 similar periodic payment that is based on the previous work of the individual and that is reasonably
 3 attributable to the week if:

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

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

10 (2) The reduction required by subsection (1) does not apply in those instances in which the
 11 governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a
 12 fund to which the individual was required to make a direct contribution. ~~A pension plan negotiated under
 13 a collective bargaining agreement is considered a direct employee contribution under this section."~~

14

15 **Section 13.** Section 39-51-2307, MCA, is amended to read:

16 "**39-51-2307. Disqualification because of student status.** (1) Except as provided in subsection
 17 (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and
 18 spring seasons of the year) or the vacation periods within the school year or during any prescribed school
 19 term if the individual is a student regularly attending an established educational institution.

20 (2) An individual attending an adult basic education class 20 hours a week or less while laid off
 21 from a job is not disqualified from receiving benefits if the individual is willing to return to work when
 22 notified.

23 (3) An otherwise eligible individual may not be denied benefits for any week because the individual
 24 is in training approved by the department, nor may the individual be denied benefits with respect to any
 25 week in which the individual is in training approved by the department by reason of the application of
 26 provisions in 39-51-2304 or the application of provisions in 39-51-2104(2)(1)(b)."

27

28 **Section 14.** Section 39-51-2403, MCA, is amended to read:

29 "**39-51-2403. Decision Hearing -- decision of appeals referee.** Upon appeal of a determination or
 30 redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by

1 ~~telephone or by videoconference.~~ After a ~~the~~ hearing, ~~an~~ the appeals referee shall promptly make findings
 2 and conclusions ~~promptly~~ and ~~on the basis thereof~~ affirm, modify, or reverse the deputy's determination
 3 or redetermination. Each interested party ~~shall~~ must be promptly furnished ~~promptly~~ a copy of the decision
 4 and the supporting findings and conclusions. This decision ~~shall be~~ is final unless further review is initiated
 5 pursuant to 39-51-2404 within 10 days after ~~such~~ notification was mailed to the interested party's
 6 last-known address, ~~provided that such~~. The 10-day period may be extended for good cause."

7
 8 **Section 15.** Section 39-51-2404, MCA, is amended to read:

9 "**39-51-2404. Appeal to board procedure.** ~~Any~~ An interested party who is dissatisfied with a
 10 decision of an appeals referee ~~is entitled to~~ may appeal to the board. The department ~~will~~ shall promptly
 11 transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by
 12 telephone or by videoconference. When a decision is rendered by the board ~~with~~ and copies of ~~such~~ the
 13 decision ~~are mailed~~ to all interested parties, including the department, that decision ~~shall become~~ is final
 14 unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court
 15 within 30 days of the date of mailing of the board's decision to ~~his~~ the party's last-known address."

16
 17 **Section 16.** Section 39-51-2407, MCA, is amended to read:

18 "**39-51-2407. Procedure for disputed claims to be prescribed by regulation -- conduct of hearing**
 19 **or appeal.** (1) The manner in which disputed claims ~~shall~~ must be presented, the reports ~~thereon~~ on
 20 disputed claims required from the claimant and from employers, and the conduct of hearings and appeals
 21 ~~shall~~ must be in accordance with regulations prescribed by the department or the board for determining the
 22 rights of the parties, whether or not ~~such~~ the regulations conform to common law or statutory rules of
 23 evidence and other technical rules or procedure.

24 (2) A hearing or appeal may be conducted by telephone or by videoconference."

25
 26 **NEW SECTION. Section 17. Access to governmental records.** Upon request by the department,
 27 a state or local government agency, including the units of the university system, or a state or local
 28 government official or employee shall cooperate by supplying the department with information that would
 29 aid in the administration of this chapter. The department may use the information only for administration
 30 of this chapter. Any confidential information provided to the department remains confidential and may not

1 be published or open to public inspection unless specifically required in the performance of the employee's
2 duties.

3

4 **NEW SECTION. Section 18. Codification instruction.** [Section 17] is intended to be codified as
5 an integral part of Title 39, chapter 51, part 5, and the provisions of Title 39, chapter 51, apply to [section
6 17].

7

8 **NEW SECTION. Section 19. Applicability.** [This act] applies to hearings or appeals requested on
9 or after [the effective date of sections 1 through 10 and 12 through 19].

10

11 **NEW SECTION. Section 20. Effective dates.** (1) [Sections 1 through 10 and 12 through 19 and
12 this section] are effective on passage and approval.

13 (2) [Section 11] is effective October 1, 1995.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0100, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising certain laws relating to unemployment insurance; requiring unemployment insurance coverage for election judges; requiring out-of-state employing units to furnish business records in state or to pay for an audit occurring outside montana; limiting the use of penalty and interest funds to the detection and collection of unpaid taxes and benefit overpayments and for certain administrative costs; subjecting liable corporate officers to civil action and lien; establishing a profiling system; eliminating pension plans negotiated under collective bargaining agreements as a direct employee contribution; establishing liability for limited liability companies; authorizing access to certain governmental records; authorizing the Board of Labor Appeals to conduct hearings and appeals by telephone or videoconference.


This bill enacts various changes to statutes relating to unemployment insurance (referred to as "housekeeping bill"). These changes, if enacted, would:

- A. require unemployment insurance coverage for election judges;
- B. require out-of-state employing units to furnish business records in state or to pay for an audit occurring outside Montana;
- C. limit the use of penalty and interest (P&I) funds to unemployment insurance administration costs, and require an annual transfer of unappropriated P&I funds to the trust fund rather than a biennial transfer;
- D. subject liable corporate officers to civil action and lien;
- E. establish a profiling system;
- F. eliminate the treatment of employer-paid pension plans negotiated under collective bargaining agreements as the same as pension plans with direct employee contribution;
- G. establish liability for limited liability companies;
- H. authorize access to certain governmental records; and
- I. authorize the department and Board of Labor Appeals to conduct hearings and appeals by telephone or video conference.

ASSUMPTIONS:

1. The costs of implementing profiling (item E above) in the Montana UI program is to be covered by funding from the federal program. The estimated implementation cost totals \$302,146 (the UI division's portion is \$194,646 and the Job Service division's portion is \$107,500). Funding is expected in the current year and is included in the budget amendment bill (HB4). It is further assumed that, because failure to participate in reemployment services will result in denial of benefits, all claimants who are selected by the profiling system for participation in "reemployment services" will participate. Even if a few do not participate, the impact on benefits and the trust fund would be minimal.
2. To estimate (for item F) the amount of benefits paid solely due to the current law which allows employer-paid pensions negotiated by collective bargaining to be treated the same as pension plans with direct employee contribution, UI benefit claims filed from March 27, 1993 - December 31, 1993, were reviewed. The following assumptions are used to estimate FY96 and FY97 impact:

(Continued)


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


JEANETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0100, as introduced

HB 100

- a. That 46 claimants received benefits and no pension deduction occurred in the nine month period reviewed. The potential weekly deduction was calculated for each claim.
- b. That the duration of all claims would be 14.32 weeks (average claims duration for FY94).
- c. That for each case, the estimated weekly benefit reduction was multiplied times the weeks of duration and the results were added. The estimated deduction for the nine month period was \$82,984.
- d. The annualized amount of the deduction would be \$110,645.

FISCAL IMPACT:Expenditures: (the letter shown corresponds to the items listed above)

- A. There would be no fiscal impact resulting from the removal of language exempting election judges from UI coverage since notice was sent in 1991 to all county offices to continue reporting and paying UI taxes on election judges, as required by federal law. Failure to enact the legislation removing the UI coverage exemption for election judges brings the threat of federal sanctions for not being in compliance with federal requirements. Federal sanctions can include loss of the UI program's administrative funding and/or Montana employers may lose their state unemployment insurance tax credit, currently 5.4%, on their federal UI tax returns.
- B. There would be no expenditure impact resulting from requiring out-of-state employing units to furnish business records or pay for an out-of-state audit. The provision specifically places responsibility for providing records or paying the cost of an audit upon the out-of state employer.
- C. Although the bill would limit the use of Penalty and Interest funds, expenditures from the P&I account would continue to be subject to legislative appropriation. However, expenditures would be limited to UI program administrative costs and would no longer be allowed for apprenticeship instruction programs as has been the case since the 1991 session.
- D. Collection of past due accounts will be absorbed in the present law base budget.
- E. The costs of implementing the federally-mandated profiling system are to be paid from moneys provided by the federal program. The agreement between the state and federal programs should be completed in the near future. Authority for FY95 is currently being requested in HB4 (budget amendment).
- F. Eliminating the deduction of pension plan payments of plans negotiated by collective bargaining from UI benefit payments would result in an estimated \$110,645 decrease in benefits paid from the UI trust fund each year. Failure to enact the legislation removing language concerning pensions negotiated under collective bargaining also brings the threat of federal sanctions for not being in compliance with federal requirements. Federal sanctions can include loss of the UI program administrative funding and/or Montana employers may lose their state unemployment insurance tax credit, currently 5.4%, on their federal UI tax returns.
- G. The fiscal impact of inclusion of limited liability companies within UI coverage and tax liability is indeterminate because there is no historical data. The bill places the division policy in statute. In absence of statutory definitions, it is assumed that the policy would be applied, resulting in no fiscal impact.
- I. No fiscal impact is anticipated from enactment of the telephone hearings portion of this bill. Presently, the department conducts telephone hearings; however, a recent Supreme Court decision is likely to change that practice. Failure to enact the legislation authorizing telephone hearings could result in a change in the department/division method of conducting hearings. This legislation permits telephone hearings. Failure to pass this bill could result in increased expenditures for reimbursement of hearings officers travel expenses and automation costs. It is estimated that, if in-person hearings are necessary, an additional 1.00 FTE hearing officer would be required and the cost to the UI program would increase \$89,283 in FY96 and \$78,277 in FY97 (\$30,942 salary and \$58,341 (FY96)/\$47,335 (FY97) increased

operating expenses, especially travel costs). UI benefit hearings will continue to be

Fiscal Note Request, HB0100, as introduced

Page 3

(continued)

conducted in-person when the request is made early in the process, a hearings officer is available to travel, and the requestor proves the need for an in-person hearing as opposed to a mere preference. This legislation is permissive in nature. Telephone hearings WILL NOT BECOME mandatory.

Revenues: (the letter shown corresponds to the items listed on page 1):

- B. By requiring out-of-state employers to furnish records or pay for audits, additional out-of-state audits would be performed. Fiscal impact to the UI trust fund is indeterminate because the outcome of these audits cannot be predicted. The number of audits would not necessarily increase so a revenue increase cannot be predicted.
- C. Income to the P&I account (estimated at \$230,000 annually for FY96 and FY97) is not changed by this legislation. The annual (rather than biennial) transfer of funds from the P&I account to the trust fund may reduce interest earnings of the P&I account and increase interest earnings of the trust fund. The impact to both accounts would be minimal.
- D. Subjecting liable corporate officers to civil action and liens is expected to increase the ability of the UI program to collect past due accounts receivables, thereby increasing income to the trust fund. Specific amounts are not known because the nature of future collection activities is not known.
- H. Implementation of the provision authorizing access to certain governmental records may prevent improper payments or result in the detection of some overpaid benefits, which would be returned to the UI trust fund. A recent audit by the Legislative Auditor's office indicated the need for authority to exchange information with other state and local agencies.

Net Impact:

(The net impact is shown for each item listed (A thru I) in the Description section on page 1 of this fiscal note. The net effect would occur in the **UI trust fund balance**. For item F, reduction in benefits results in an increase in UI trust fund balance.)

<u>Item related to:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
A. Coverage for election judges	0	0
B. Out-of-state audits	0	0
C. Limit use of P&I funds	0	0
D. Liable corporate officers	Indeter. Incr.	Indeter. Incr.
E. Profiling system	0	0
F. Pension pay treatment	110,645	110,645
G. Limited liability companies	0	0
H. Access to governmental records	0	0
I. Telephone hearings	<u>0</u>	<u>0</u>
Total	110,645	110,645

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The provisions of this bill collectively would result in a positive effect on the UI trust fund that would not in all likelihood be significant given that the balance of the trust fund is \$106 million as of the end of CY 1994.

By correcting those items in Montana statute that do not conform to federal requirements, Montana avoids the risk of sanctions that would have a high cost to Montana.1

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 100

INTRODUCED BY MCKEE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE, WITH THE CONSENT OF BOTH PARTIES; PROVIDING THAT THE REDUCTION IN BENEFITS REQUIREMENT DOES NOT APPLY TO A PENSION COVERED BY SECTION 501(C)(9) OF THE INTERNAL REVENUE CODE; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203, 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104, 39-51-2203, 39-51-2307, 39-51-2403, 39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE DATES AND, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

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

Section 1. Section 13-4-106, MCA, is amended to read:

"13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges ~~shall~~ must be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. ~~Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter.~~

(2) The chief election judge may be paid at a rate higher than the other election judges and may

1 be reimbursed for the actual expenses of transporting election materials.

2 (3) The election administrator shall certify the amount due each election judge to the county
3 governing body as soon after an election as all records necessary for ~~such~~ the certification are received."

4

5 **Section 2.** Section 39-51-201, MCA, is amended to read:

6 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
7 otherwise, the following definitions apply:

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

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

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

21 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
22 with the first day of the calendar week in which ~~such~~ the individual files a valid claim for benefits, except
23 that the benefit year ~~shall be~~ is 53 weeks if filing a new valid claim would result in overlapping any quarter
24 of the base year of a previously filed new claim. A subsequent benefit year may not be established until
25 the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the
26 arrangement approved by the secretary of labor of the United States, the base period is the period
27 applicable under the unemployment law of the paying state.

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

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

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

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

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

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

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

25 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
26 for which an individual has been convicted in a criminal court or has admitted or conduct ~~which~~ that
27 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
28 or the employer.

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

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

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

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

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

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

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

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

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

16 (b) Notwithstanding ~~any of the foregoing provisions of this subsection~~ (15)(a), all colleges and
17 universities in this state are institutions of higher education for purposes of this part.

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

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

22 (18) "Unemployment insurance administration fund" means the unemployment insurance
23 administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~
24 must be paid.

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

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

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

4 (A) retirement;

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

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

7 (D) death;

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

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

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

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

15
 16 **Section 3.** Section 39-51-203, MCA, is amended to read:

17 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
 18 means service by an individual, by a manager or member of a manager-managed limited liability company
 19 that has filed with the secretary of state, or by an officer of a corporation, including service in interstate
 20 commerce, performed for wages or under any contract of hire, written or oral, express or implied.

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

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

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

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

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

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

30 (i) the service is performed entirely within ~~such~~ the state; or

1 (ii) the service is performed both within and ~~without such~~ outside the state, but the service
 2 performed ~~without such~~ outside the state is incidental to the individual's service within the state; for
 3 example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

4 (3) Service not covered under subsection (2) ~~of this section~~ and performed entirely ~~without this~~
 5 outside the state ~~with respect to no part of and on~~ which contributions are neither required ~~and~~ nor paid
 6 under an unemployment insurance law of any other state or of the federal government is considered to be
 7 employment subject to this chapter if the individual performing ~~such the~~ the services is a resident of this state
 8 and the department approves the election of the employing unit for whom ~~such the~~ the services are performed
 9 in order that the entire service of ~~such the~~ the individual is considered to be employment subject to this
 10 chapter.

11 (4) Service performed by an individual for wages is considered to be employment subject to this
 12 chapter ~~unless and~~ until it is shown to the satisfaction of the department that the individual is an
 13 independent contractor.

14 (5) The term "employment" includes service performed by an individual in the employ of this state
 15 or any of its instrumentalities (or in the employ of this state and one or more other states or their
 16 instrumentalities) for a hospital or institution of higher education located in this state. The term
 17 "employment" includes service performed by all individuals, including ~~without limitations~~ those individuals
 18 who work for the state of Montana, its universities, ~~any of its colleges,~~ public schools, components or units
 19 ~~thereof~~ of universities or public schools, or any local government unit and one or more other states or their
 20 instrumentalities or political subdivisions whose services are compensated by salary or wages.

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

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

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

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

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

30 (B) the employer is a corporation ~~which that~~ that is organized under the laws of this state; or

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

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

6 (b) An "American employer", for purposes of this subsection (7), means a person who is:

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

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

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

10 (iv) a corporation organized under the laws of the United States or of any state."
 11

12 **Section 4.** Section 39-51-204, MCA, is amended to read:

13 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
 14 include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) service performed in the employ of a school, ~~college,~~ or university if the service is performed
28 by a student who is enrolled and is regularly attending classes at a school, ~~college,~~ or university or by the
29 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
30 service, that the employment of the spouse to perform the service is provided under a program to provide

1 financial assistance to the student by the school, ~~college,~~ or university and that the employment will not
 2 be covered by any program of unemployment insurance;

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

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

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

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

16 (ii) who contracts with a cosmetology salon as defined in 37-31-101 or a barbershop as defined
 17 in 37-30-101, which contract must show that the cosmetologist or barber:

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

19 (B) receives payment for services from individual clientele; and

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

22 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination
 23 (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack
 24 of freedom from control or direction under this subsection);

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

29 (n) employment of sole proprietors ~~or,~~ working members of a partnership, or members of a
 30 member-managed limited liability company that has filed with the secretary of state;

- 1 (o) services performed for the installation of floor coverings if the installer:
- 2 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 3 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 4 (iii) may perform services for anyone without limitation;
- 5 (iv) may accept or reject any job;
- 6 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 7 (vi) works under a written contract that:
- 8 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 9 contract obligations;
- 10 (B) states that the installer is not covered by unemployment insurance; and
- 11 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 12 exemption from workers' compensation requirements.
- 13 (2) "Employment" does not include elected public officials.
- 14 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 15 (a) in the employ of a church or convention or association of churches or an organization that is
- 16 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 17 supported by a church or convention or association of churches;
- 18 (b) by ~~a duty~~ an ordained, commissioned, or licensed minister of a church in the exercise of the
- 19 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 20 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 21 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 22 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
- 23 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
- 24 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
- 25 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
- 26 receiving work relief or work training; or
- 27 (e) for a state prison or other state correctional or custodial institution by an inmate of that
- 28 institution.
- 29 (4) An individual found to be an independent contractor by the department under the terms of
- 30 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent

1 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
2 39-51-2402.

3 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
4 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
5 employment as defined in the Federal Unemployment Tax Act."
6

7 **Section 5.** Section 39-51-603, MCA, is amended to read:

8 **"39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep
9 true and accurate work records containing ~~such the~~ information ~~as that~~ the department may prescribe.
10 Those records ~~shall~~ must be open to inspection and audit and ~~shall be subject to being~~ may be copied by
11 the department or its authorized representative at any reasonable time and as often as may be necessary.
12 An employing unit that maintains its records outside Montana shall furnish a copy of those records to the
13 department at the employing unit's expense or shall pay the department for the costs associated with
14 conducting the audit outside Montana.

15 (2) The department and the ~~chairman~~ presiding officer of any appeal tribunal may require from any
16 employing unit any sworn or unsworn reports with respect to persons employed by it ~~which that~~
17 department considers necessary ~~to~~ for the effective administration of this chapter.

18 (3) Information ~~thus obtained or~~ obtained from any individual under this chapter ~~shall~~ must, except
19 to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential
20 and ~~shall~~ may not be published or be open to public inspection, except to public employees in the
21 performance of their public duties, in any manner revealing the individual's or employing unit's identity, but
22 any claimant or ~~his~~ the claimant's legal representative at a hearing before the board or appeal tribunal ~~shall~~
23 must be supplied with information from the records to the extent necessary for the proper presentation of
24 ~~his~~ the claim.

25 (4) Any employee or member of the department who violates any provision of this section shall
26 be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days₂ or both."
27

28 **Section 6.** Section 39-51-1105, MCA, is amended to read:

29 **"39-51-1105. Liability of corporate officers, managers, or members of limited liability company for**
30 **taxes, penalties, and interest owed by corporation or company.** (1) When a corporation subject to

1 Montana corporate law or a limited liability company ~~has failed~~ fails to file the annual corporation or
 2 company report with the Montana secretary of state as required by law, the department shall hold the
 3 president, ~~vice president~~ vice president, secretary, and treasurer or the managers of a manager-managed
 4 limited liability company jointly and severally liable for any taxes, penalties, and interest due for the period
 5 in which the corporation or company is delinquent in filing the annual corporation or company report. If
 6 the required annual corporation or company report is made and filed after the time specified, ~~such~~ the
 7 officers or managers may not, on account of prior failure to make report, be held liable for the taxes,
 8 penalties, and interest ~~thereafter~~ accruing after making the report.

9 (2) For determining liability for taxes, penalties, and interest owed, a member-managed limited
 10 liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed
 11 extending to each member."

12

13 **Section 7.** Section 39-51-1109, MCA, is amended to read:

14 **"39-51-1109. Tax appeals -- procedure.** A decision, determination, or redetermination of the
 15 department involving contribution liability, contribution rate, application for refund, employment status, or
 16 the charging of benefit payments to employers making payment in lieu of contributions is final unless an
 17 interested party entitled to ~~notice thereof applies for an appeal to an appeals referee~~ notification submits
 18 a written appeal of the decision, determination, or redetermination. The appeal must be made in the same
 19 manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment
 20 insurance benefits. Statutory rules of evidence and civil procedure do not apply to ~~hearings in a hearing~~
 21 on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the
 22 appeals referee and any subsequent appeal ~~therefrom~~ must be made in the same manner as prescribed in
 23 39-51-2403 through 39-51-2410."

24

25 **Section 8.** Section 39-51-1301, MCA, is amended to read:

26 **"39-51-1301. Penalty and interest on past-due taxes.** (1) Taxes unpaid on the date on which they
 27 are due and payable, as provided by ~~subsections (1) and (2) of 39-51-1103 (1) and (2) and 39-51-1125,~~
 28 that are paid by the end of the month following the due date ~~shall be~~ are subject to a penalty assessment
 29 of \$10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month
 30 following the due date, the employer ~~shall be~~ is subject to a penalty assessment of \$15 or 15% of the taxes

1 due, whichever is greater. All past-due taxes ~~shall~~ bear interest at the rate of 18% a year, to be prorated
2 on a daily basis.

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

6 (3) There is an account in the federal special revenue fund. Penalties and interest collected under
7 this section must be deposited in that account. Money deposited in that account and appropriated to the
8 department may only be used by the department to administer this chapter, ~~to fund apprenticeship~~
9 ~~instruction programs pursuant to 39-6-103, and to detect~~ including the detection and collect collection of
10 unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts
11 appropriated for this purpose. Money in the account not appropriated for these purposes must be
12 transferred by the department to the unemployment insurance trust fund at the end of each ~~biennium~~ fiscal
13 year.

14 (4) When failure to pay taxes on time was not caused by willful intent of the employer, the
15 department may abate the penalty and interest.

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

19

20 **Section 9.** Section 39-51-1303, MCA, is amended to read:

21 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
22 liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105
23 defaults in any payment of taxes, penalties, or interest ~~thereon~~, the department may ~~at its discretion~~ initiate
24 a civil action in the name of the ~~Montana~~ department of ~~labor and industry~~ to collect the amount due, and
25 the employer, liable corporate officer, or liable member or manager of a limited liability company referred
26 to in 39-51-1105 adjudged in default shall pay the costs of ~~such~~ the action.

27 (2) An action for the collection of taxes due must be brought within 5 years after the due date of
28 ~~such~~ the taxes or it is barred.

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

1 **Section 10.** Section 39-51-1304, MCA, is amended to read:

2 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
 3 penalties and interest assessed ~~thereon~~ on unpaid taxes, have the effect of a judgment against the
 4 employer, liable corporate officer, or liable member or manager of a limited liability company referred to in
 5 39-51-1105, arising at the time ~~such that~~ the payments are due. The department may issue a certificate
 6 ~~setting forth~~ stating the amount of payments due and directing the clerk of the district court of any county
 7 of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that
 8 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the
 9 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce
 10 the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at
 11 any time within 10 years of the creation of the lien.

12 (2) The lien provided for in subsection (1) is not valid against any third party owning an interest
 13 in real or personal property against which the judgment is enforced if:

- 14 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and
 15 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
 16 that all taxes, penalties, and interest due from the grantor have been paid.

17 (3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
 18 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
 19 against the employer, liable corporate officer, or liable member or manager of a limited liability company
 20 referred to in 39-51-1105 under ~~this section or~~ 39-51-1303 or this section, or both, to collect the
 21 delinquent taxes, penalties, and interest.

22 (4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
 23 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
 24 upon partial payment or whenever the department determines that the release or partial release of the lien
 25 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
 26 it determines that the lien is unenforceable."
 27

28 **Section 11.** Section 39-51-2104, MCA, is amended to read:

29 **"39-51-2104. General benefit eligibility conditions.** (1) An unemployed individual is eligible to
 30 receive benefits for any week of total unemployment within the individual's benefit year only if the

1 department finds that the individual:

2 ~~(1)(a)~~ has filed a claim at and has continued to report at an employment office in accordance with
3 rules ~~as that~~ the department may prescribe, except that the department may by rule prescribe that in cases
4 in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an
5 unemployed individual may file a claim and report for work by mail or through other governmental agencies;

6 ~~(2)(b)~~ is able to work, is available for work, and is seeking work. A claimant is not considered
7 ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the
8 failure is ~~due to~~ because of:

9 ~~(a)(i)~~ an illness or disability that occurs after the claimant has registered for work and suitable work
10 has not been offered to the claimant after the beginning of the illness or disability; or

11 ~~(b)(ii)~~ enrollment as a student as provided in 39-51-2307.

12 ~~(3)(c)~~ prior to the first week for which the individual is paid benefits, has been totally unemployed
13 for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes
14 of this subsection:

15 ~~(a)(i)~~ if benefits have been paid for that week;

16 ~~(b)(ii)~~ unless the individual was eligible for benefits during the week;

17 ~~(c)(iii)~~ unless it occurs within the benefit year of the claimant;

18 ~~(d)(iv)~~ unless it occurs after benefits first could become payable to any individual under this chapter.

19 (2) (a) The department shall establish a profiling system to identify individuals who are likely to
20 exhaust their regular benefits and who are in need of reemployment services.

21 (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to
22 subsection (2)(a) may be required to participate in reemployment services in order to be eligible for
23 unemployment benefits.

24 (c) The requirement for participation in reemployment services may be waived if the department
25 determines that:

26 (i) the individual has completed reemployment services; or

27 (ii) the individual's failure to participate in reemployment services is justifiable."

28

29 **Section 12.** Section 39-51-2203, MCA, is amended to read:

30 **"39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1)**

1 An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the
 2 individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other
 3 similar periodic payment that is based on the previous work of the individual and that is reasonably
 4 attributable to the week if:

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

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

11 (2) The reduction required by subsection (1) does not apply in those instances in which the
 12 governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a
 13 fund to which the individual was required to make a direct contribution. ~~A pension plan negotiated under
 14 a collective bargaining agreement is considered a direct employee contribution under this section.~~

15 (3) THE REDUCTION REQUIRED BY SUBSECTION (1) DOES NOT APPLY TO A PENSION COVERED
 16 BY SECTION 501(C)(9) OF THE INTERNAL REVENUE CODE."

17

18 **Section 13.** Section 39-51-2307, MCA, is amended to read:

19 **"39-51-2307. Disqualification because of student status.** (1) Except as provided in subsection
 20 (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and
 21 spring seasons of the year) or the vacation periods within the school year or during any prescribed school
 22 term if the individual is a student regularly attending an established educational institution.

23 (2) An individual attending an adult basic education class 20 hours a week or less while laid off
 24 from a job is not disqualified from receiving benefits if the individual is willing to return to work when
 25 notified.

26 (3) An otherwise eligible individual may not be denied benefits for any week because the individual
 27 is in training approved by the department, nor may the individual be denied benefits with respect to any
 28 week in which the individual is in training approved by the department by reason of the application of
 29 provisions in 39-51-2304 or the application of provisions in 39-51-2104~~(2)~~(1)(b)."

30

1 **Section 14.** Section 39-51-2403, MCA, is amended to read:

2 "**39-51-2403. Decision Hearing -- decision of appeals referee.** Upon appeal of a determination or
 3 redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by
 4 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. After a the hearing, an the
 5 appeals referee shall promptly make findings and conclusions ~~promptly~~ and ~~on the basis thereof~~ affirm,
 6 modify, or reverse the deputy's determination or redetermination. Each interested party shall must be
 7 promptly furnished ~~promptly~~ a copy of the decision and the supporting findings and conclusions. This
 8 decision ~~shall be~~ is final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~such~~
 9 notification was mailed to the interested party's last-known address, ~~provided that such.~~ The 10-day period
 10 may be extended for good cause."

11

12 **Section 15.** Section 39-51-2404, MCA, is amended to read:

13 "**39-51-2404. Appeal to board procedure.** ~~Any~~ An interested party who is dissatisfied with a
 14 decision of an appeals referee ~~is entitled to~~ may appeal to the board. The department ~~will~~ shall promptly
 15 transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by
 16 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. When a decision is rendered
 17 by the board ~~with~~ and copies of ~~such~~ the decision are mailed to all interested parties, including the
 18 department, that decision ~~shall become~~ is final unless an interested party requests a rehearing or initiates
 19 judicial review by filing a petition in district court within 30 days of the date of mailing of the board's
 20 decision to ~~his~~ the party's last-known address."

21

22 **Section 16.** Section 39-51-2407, MCA, is amended to read:

23 "**39-51-2407. Procedure for disputed claims to be prescribed by regulation -- conduct of hearing**
 24 **or appeal.** (1) The manner in which disputed claims shall must be presented, the reports ~~thereon~~ on
 25 disputed claims required from the claimant and from employers, and the conduct of hearings and appeals
 26 shall must be in accordance with regulations prescribed by the department or the board for determining the
 27 rights of the parties, whether or not ~~such~~ the regulations conform to common law or statutory rules of
 28 evidence and other technical rules or procedure.

29 (2) A hearing or appeal may be conducted by telephone or by videoconference, WITH THE
 30 CONSENT OF BOTH PARTIES."

1 **NEW SECTION. Section 17. Access to governmental records.** Upon request by the department,
 2 a state or local government agency, including the units of the university system, or a state or local
 3 government official or employee shall cooperate by supplying the department with information that would
 4 aid in the administration of this chapter. The department may use the information only for administration
 5 of this chapter. Any confidential information provided to the department remains confidential and may not
 6 be published or open to public inspection unless specifically required in the performance of the employee's
 7 duties.

8
 9 **NEW SECTION. Section 18. Codification instruction.** [Section 17] is intended to be codified as
 10 an integral part of Title 39, chapter 51, part 5, and the provisions of Title 39, chapter 51, apply to [section
 11 17].

12
 13 **NEW SECTION. Section 19. Applicability.** [This act] applies to hearings or appeals requested on
 14 or after [the effective date of sections 1 through 10 and 12 through 19].

15
 16 **NEW SECTION. Section 20. Effective dates.** (1) [SECTION 1] IS EFFECTIVE JANUARY 1, 1996.
 17 (2) [Sections 4 2 through 10 and 12 through 19, 21, and this section] are effective on passage
 18 and approval.

19 ~~(2)(3)~~ [Section 11] is effective October 1, 1995.

20
 21 **NEW SECTION. SECTION 21. CONTINGENT TERMINATION. IF 26 U.S.C. 3304 IS AMENDED TO**
 22 **NO LONGER REQUIRE THAT ELECTION JUDGES RECEIVE UNEMPLOYMENT INSURANCE COVERAGE,**
 23 **THEN [SECTION 1 OF THIS ACT] TERMINATES ON THE DATE ON WHICH THE U.S.C. AMENDMENT IS**
 24 **EFFECTIVE.**

25 -END-

1 HOUSE BILL NO. 100

2 INTRODUCED BY MCKEE

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT
6 INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING
7 OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN
8 AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO
9 THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR
10 CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND
11 LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER
12 COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING
13 LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL
14 RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY
15 TELEPHONE OR VIDEOCONFERENCE, ~~WITH THE CONSENT OF BOTH PARTIES; PROVIDING THAT THE~~
16 ~~REDUCTION IN BENEFITS REQUIREMENT DOES NOT APPLY TO A PENSION COVERED BY SECTION~~
17 ~~501(C)(9) OF THE INTERNAL REVENUE CODE~~; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203,
18 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104,
19 39-51-2203, 39-51-2307, 39-51-2403, 39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE
20 DATES AND, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

21

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

23

24 Section 1. Section 13-4-106, MCA, is amended to read:

25 "13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges
26 ~~shall~~ must be paid at the prevailing federal minimum wage for the number of hours worked during an
27 election plus the number of hours spent at the instruction session. Mileage may be paid to election judges
28 for attending instruction sessions. ~~Election judges are exempt from unemployment insurance coverage for~~
29 ~~services performed pursuant to this chapter.~~

30 (2) The chief election judge may be paid at a rate higher than the other election judges and may

1 be reimbursed for the actual expenses of transporting election materials.

2 (3) The election administrator shall certify the amount due each election judge to the county
3 governing body as soon after an election as all records necessary for ~~such~~ the certification are received."

4

5 **Section 2.** Section 39-51-201, MCA, is amended to read:

6 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
7 otherwise, the following definitions apply:

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

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

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

21 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
22 with the first day of the calendar week in which ~~such~~ the individual files a valid claim for benefits, except
23 that the benefit year ~~shall be~~ is 53 weeks if filing a new valid claim would result in overlapping any quarter
24 of the base year of a previously filed new claim. A subsequent benefit year may not be established until
25 the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the
26 arrangement approved by the secretary of labor of the United States, the base period is the period
27 applicable under the unemployment law of the paying state.

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

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

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

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

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

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

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

25 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
26 for which an individual has been convicted in a criminal court or has admitted or conduct ~~which that~~
27 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
28 or the employer.

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

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

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

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

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

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

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

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

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

16 (b) Notwithstanding ~~any of the foregoing provisions of this subsection~~ (15)(a), all ~~colleges and~~
17 universities in this state are institutions of higher education for purposes of this part.

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

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

22 (18) "Unemployment insurance administration fund" means the unemployment insurance
23 administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~
24 must be paid.

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

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

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

4 (A) retirement;

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

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

7 (D) death;

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

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

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

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

15
 16 **Section 3.** Section 39-51-203, MCA, is amended to read:

17 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
 18 means service by an individual, by a manager or member of a manager-managed limited liability company
 19 that has filed with the secretary of state, or by an officer of a corporation, including service in interstate
 20 commerce, performed for wages or under any contract of hire, written or oral, express or implied.

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

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

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

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

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

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

30 (i) the service is performed entirely within ~~such~~ the state; or

1 (iii) the service is performed both within and ~~without such~~ outside the state, but the service
 2 performed ~~without such~~ outside the state is incidental to the individual's service within the state; for
 3 example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

4 (3) Service not covered under subsection (2) ~~of this section~~ and performed entirely ~~without this~~
 5 outside the state ~~with respect to no part of and on~~ which contributions are neither required ~~and nor~~ paid
 6 under an unemployment insurance law of any other state or of the federal government is considered to be
 7 employment subject to this chapter if the individual performing ~~such the~~ the services is a resident of this state
 8 and the department approves the election of the employing unit for whom ~~such the~~ the services are performed
 9 in order that the entire service of ~~such the~~ the individual is considered to be employment subject to this
 10 chapter.

11 (4) Service performed by an individual for wages is considered to be employment subject to this
 12 chapter ~~unless and~~ until it is shown to the satisfaction of the department that the individual is an
 13 independent contractor.

14 (5) The term "employment" includes service performed by an individual in the employ of this state
 15 or any of its instrumentalities (or in the employ of this state and one or more other states or their
 16 instrumentalities) for a hospital or institution of higher education located in this state. The term
 17 "employment" includes service performed by all individuals, including ~~without limitations~~ those individuals
 18 who work for the state of Montana, its universities, ~~any of its colleges,~~ public schools, components or units
 19 ~~thereof~~ of universities or public schools, or any local government unit and one or more other states or their
 20 instrumentalities or political subdivisions whose services are compensated by salary or wages.

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

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

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

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

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

30 (B) the employer is a corporation ~~which that~~ that is organized under the laws of this state; or

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

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

6 (b) An "American employer", for purposes of this subsection (7), means a person who is:

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

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

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

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

11
12 **Section 4.** Section 39-51-204, MCA, is amended to read:

13 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
14 include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) service performed in the employ of a school, ~~college,~~ or university if the service is performed
28 by a student who is enrolled and is regularly attending classes at a school, ~~college,~~ or university or by the
29 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
30 service, that the employment of the spouse to perform the service is provided under a program to provide

1 financial assistance to the student by the school, ~~college,~~ or university and that the employment will not
2 be covered by any program of unemployment insurance;

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

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

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

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

16 (ii) who contracts with a cosmetology salon as defined in 37-31-101 or a barbershop as defined
17 in 37-30-101, which contract must show that the cosmetologist or barber:

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

19 (B) receives payment for services from individual clientele; and

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

22 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination
23 (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack
24 of freedom from control or direction under this subsection);

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

29 (n) employment of sole proprietors ~~or,~~ working members of a partnership, or members of a
30 member-managed limited liability company that has filed with the secretary of state;

- 1 (o) services performed for the installation of floor coverings if the installer:
- 2 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 3 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 4 (iii) may perform services for anyone without limitation;
- 5 (iv) may accept or reject any job;
- 6 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 7 (vi) works under a written contract that:
- 8 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 9 contract obligations;
- 10 (B) states that the installer is not covered by unemployment insurance; and
- 11 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 12 exemption from workers' compensation requirements.
- 13 (2) "Employment" does not include elected public officials.
- 14 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 15 (a) in the employ of a church or convention or association of churches or an organization that is
- 16 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 17 supported by a church or convention or association of churches;
- 18 (b) by ~~a duty~~ an ordained, commissioned, or licensed minister of a church in the exercise of the
- 19 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 20 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 21 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 22 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
- 23 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
- 24 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
- 25 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
- 26 receiving work relief or work training; or
- 27 (e) for a state prison or other state correctional or custodial institution by an inmate of that
- 28 institution.
- 29 (4) An individual found to be an independent contractor by the department under the terms of
- 30 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent

1 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
2 39-51-2402.

3 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
4 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
5 employment as defined in the Federal Unemployment Tax Act."
6

7 **Section 5.** Section 39-51-603, MCA, is amended to read:

8 **"39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep
9 true and accurate work records containing ~~such~~ the information ~~as that~~ the department may prescribe.
10 Those records ~~shall~~ must be open to inspection and audit and ~~shall be subject to being~~ may be copied by
11 the department or its authorized representative at any reasonable time and as often as may be necessary.
12 An employing unit that maintains its records outside Montana shall furnish a copy of those records to the
13 department at the employing unit's expense or shall pay the department for the costs associated with
14 conducting the audit outside Montana.

15 (2) The department and the ~~chairman~~ presiding officer of any appeal tribunal may require from any
16 employing unit any sworn or unsworn reports with respect to persons employed by it ~~which~~ that the
17 department considers necessary ~~to~~ for the effective administration of this chapter.

18 (3) Information ~~thus obtained~~ or obtained from any individual under this chapter ~~shall~~ must, except
19 to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential
20 and ~~shall~~ may not be published or be open to public inspection, except to public employees in the
21 performance of their public duties, in any manner revealing the individual's or employing unit's identity, but
22 any claimant or ~~his~~ the claimant's legal representative at a hearing before the board or appeal tribunal ~~shall~~
23 must be supplied with information from the records to the extent necessary for the proper presentation of
24 ~~his~~ the claim.

25 (4) Any employee or member of the department who violates any provision of this section shall
26 be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both."
27

28 **Section 6.** Section 39-51-1105, MCA, is amended to read:

29 **"39-51-1105. Liability of corporate officers, managers, or members of limited liability company for**
30 **taxes, penalties, and interest owed by corporation or company.** (1) When a corporation subject to

1 Montana corporate law or a limited liability company ~~has failed~~ fails to file the annual corporation or
 2 company report with the Montana secretary of state as required by law, the department shall hold the
 3 president, ~~vice president~~ vice president, secretary, and treasurer or the managers of a manager-managed
 4 limited liability company jointly and severally liable for any taxes, penalties, and interest due for the period
 5 in which the corporation or company is delinquent in filing the annual corporation or company report. If
 6 the required annual corporation or company report is made and filed after the time specified, ~~such the~~ the
 7 officers or managers may not, on account of prior failure to make report, be held liable for the taxes,
 8 penalties, and interest ~~thereafter~~ accruing after making the report.

9 (2) For determining liability for taxes, penalties, and interest owed, a member-managed limited
 10 liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed
 11 extending to each member."

12
 13 **Section 7.** Section 39-51-1109, MCA, is amended to read:

14 **"39-51-1109. Tax appeals -- procedure.** A decision, determination, or redetermination of the
 15 department involving contribution liability, contribution rate, application for refund, employment status, or
 16 the charging of benefit payments to employers making payment in lieu of contributions is final unless an
 17 interested party entitled to ~~notice thereof applies for an appeal to an appeals referee~~ notification submits
 18 a written appeal of the decision, determination, or redetermination. The appeal must be made in the same
 19 manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment
 20 insurance benefits. Statutory rules of evidence and civil procedure do not apply to ~~hearings in a hearing~~
 21 on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the
 22 appeals referee and any subsequent appeal ~~therefrom~~ must be made in the same manner as prescribed in
 23 39-51-2403 through 39-51-2410."

24
 25 **Section 8.** Section 39-51-1301, MCA, is amended to read:

26 **"39-51-1301. Penalty and interest on past-due taxes.** (1) Taxes unpaid on the date on which they
 27 are due and payable, as provided by ~~subsections (1) and (2) of 39-51-1103~~ (1) and (2) and 39-51-1125,
 28 that are paid by the end of the month following the due date ~~shall be~~ are subject to a penalty assessment
 29 of \$10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month
 30 following the due date, the employer ~~shall be~~ is subject to a penalty assessment of \$15 or 15% of the taxes

1 due, whichever is greater. All past-due taxes ~~shall~~ bear interest at the rate of 18% a year, to be prorated
2 on a daily basis.

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

6 (3) There is an account in the federal special revenue fund. Penalties and interest collected under
7 this section must be deposited in that account. Money deposited in that account and appropriated to the
8 department may only be used by the department to administer this chapter, ~~to fund apprenticeship~~
9 ~~instruction programs pursuant to 39-6-103, and to detect~~ including the detection and collect collection of
10 unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts
11 appropriated for this purpose. Money in the account not appropriated for these purposes must be
12 transferred by the department to the unemployment insurance trust fund at the end of each ~~biennium~~ fiscal
13 year.

14 (4) When failure to pay taxes on time was not caused by willful intent of the employer, the
15 department may abate the penalty and interest.

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

19

20 **Section 9.** Section 39-51-1303, MCA, is amended to read:

21 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
22 liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105
23 defaults in any payment of taxes, penalties, or interest ~~thereon~~, the department may ~~at its discretion~~ initiate
24 a civil action in the name of the ~~Montana~~ department of labor and industry to collect the amount due, and
25 the employer, liable corporate officer, or liable member or manager of a limited liability company referred
26 to in 39-51-1105 adjudged in default shall pay the costs of ~~such~~ the action.

27 (2) An action for the collection of taxes due must be brought within 5 years after the due date of
28 ~~such~~ the taxes or it is barred.

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

1 **Section 10.** Section 39-51-1304, MCA, is amended to read:

2 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
3 penalties and interest assessed ~~thereon~~ on unpaid taxes, have the effect of a judgment against the
4 employer, liable corporate officer, or liable member or manager of a limited liability company referred to in
5 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a certificate
6 ~~setting forth~~ stating the amount of payments due and directing the clerk of the district court of any county
7 of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that
8 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the
9 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce
10 the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at
11 any time within 10 years of the creation of the lien.

12 (2) The lien provided for in subsection (1) is not valid against any third party owning an interest
13 in real or personal property against which the judgment is enforced if:

14 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

15 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
16 that all taxes, penalties, and interest due from the grantor have been paid.

17 (3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
18 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
19 against the employer, liable corporate officer, or liable member or manager of a limited liability company
20 referred to in 39-51-1105 under ~~this section~~ or 39-51-1303 or this section, or both, to collect the
21 delinquent taxes, penalties, and interest.

22 (4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
23 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
24 upon partial payment or whenever the department determines that the release or partial release of the lien
25 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
26 it determines that the lien is unenforceable."

27
28 **Section 11.** Section 39-51-2104, MCA, is amended to read:

29 **"39-51-2104. General benefit eligibility conditions.** (1) An unemployed individual is eligible to
30 receive benefits for any week of total unemployment within the individual's benefit year only if the

1 department finds that the individual:

2 ~~(1)(a)~~ has filed a claim at and has continued to report at an employment office in accordance with
3 rules as that the department may prescribe, except that the department may by rule prescribe that in cases
4 in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an
5 unemployed individual may file a claim and report for work by mail or through other governmental agencies;

6 ~~(2)(b)~~ is able to work, is available for work, and is seeking work. A claimant is not considered
7 ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the
8 failure is ~~due to~~ because of:

9 ~~(a)(i)~~ an illness or disability that occurs after the claimant has registered for work and suitable work
10 has not been offered to the claimant after the beginning of the illness or disability; or

11 ~~(b)(ii)~~ enrollment as a student as provided in 39-51-2307.

12 ~~(3)(c)~~ prior to the first week for which the individual is paid benefits, has been totally unemployed
13 for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes
14 of this subsection:

15 ~~(a)(i)~~ if benefits have been paid for that week;

16 ~~(b)(ii)~~ unless the individual was eligible for benefits during the week;

17 ~~(c)(iii)~~ unless it occurs within the benefit year of the claimant;

18 ~~(d)(iv)~~ unless it occurs after benefits first could become payable to any individual under this chapter.

19 (2) (a) The department shall establish a profiling system to identify individuals who are likely to
20 exhaust their regular benefits and who are in need of reemployment services.

21 (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to
22 subsection (2)(a) may be required to participate in reemployment services in order to be eligible for
23 unemployment benefits.

24 (c) The requirement for participation in reemployment services may be waived if the department
25 determines that:

26 (i) the individual has completed reemployment services; or

27 (ii) the individual's failure to participate in reemployment services is justifiable."

28

29 **Section 12.** Section 39-51-2203, MCA, is amended to read:

30 **"39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1)**

1 An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the
 2 individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other
 3 similar periodic payment that is based on the previous work of the individual and that is reasonably
 4 attributable to the week if:

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

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

11 (2) The reduction required by subsection (1) does not apply in those instances in which the
 12 governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a
 13 fund to which the individual was required to make a direct contribution. ~~A pension plan negotiated under
 14 a collective bargaining agreement is considered a direct employee contribution under this section.~~

15 ~~(3) THE REDUCTION REQUIRED BY SUBSECTION (1) DOES NOT APPLY TO A PENSION COVERED~~
 16 ~~BY SECTION 501(G)(9) OF THE INTERNAL REVENUE CODE."~~

17

18 **Section 13.** Section 39-51-2307, MCA, is amended to read:

19 "**39-51-2307. Disqualification because of student status.** (1) Except as provided in subsection
 20 (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and
 21 spring seasons of the year) or the vacation periods within the school year or during any prescribed school
 22 term if the individual is a student regularly attending an established educational institution.

23 (2) An individual attending an adult basic education class 20 hours a week or less while laid off
 24 from a job is not disqualified from receiving benefits if the individual is willing to return to work when
 25 notified.

26 (3) An otherwise eligible individual may not be denied benefits for any week because the individual
 27 is in training approved by the department, nor may the individual be denied benefits with respect to any
 28 week in which the individual is in training approved by the department by reason of the application of
 29 provisions in 39-51-2304 or the application of provisions in 39-51-2104(2)(1)(b)."

30

1 **Section 14.** Section 39-51-2403, MCA, is amended to read:

2 "**39-51-2403. ~~Decision Hearing -- decision of appeals referee.~~** Upon appeal of a determination or
 3 redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by
 4 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. After a ~~the~~ hearing, an ~~the~~
 5 appeals referee shall promptly make findings and conclusions ~~promptly~~ and ~~on the basis thereof~~ affirm,
 6 modify, or reverse the deputy's determination or redetermination. Each interested party ~~shall~~ must be
 7 promptly furnished ~~promptly~~ a copy of the decision and the supporting findings and conclusions. This
 8 decision ~~shall be~~ is final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~such~~
 9 notification was mailed to the interested party's last-known address, ~~provided that such.~~ The 10-day period
 10 may be extended for good cause."

11

12 **Section 15.** Section 39-51-2404, MCA, is amended to read:

13 "**39-51-2404. Appeal to board procedure.** ~~Any~~ An interested party who is dissatisfied with a
 14 decision of an appeals referee ~~is entitled to~~ may appeal to the board. The department ~~will~~ shall promptly
 15 transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by
 16 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. When a decision is rendered
 17 by the board ~~with~~ and copies of ~~such~~ the decision are mailed to all interested parties, including the
 18 department, that decision ~~shall become~~ is final unless an interested party requests a rehearing or initiates
 19 judicial review by filing a petition in district court within 30 days of the date of mailing of the board's
 20 decision to ~~his~~ the party's last-known address."

21

22 **Section 16.** Section 39-51-2407, MCA, is amended to read:

23 "**39-51-2407. Procedure for disputed claims to be prescribed by regulation -- conduct of hearing**
 24 **or appeal.** (1) The manner in which disputed claims ~~shall~~ must be presented, the reports ~~thereon~~ on
 25 disputed claims required from the claimant and from employers, and the conduct of hearings and appeals
 26 ~~shall~~ must be in accordance with regulations prescribed by the department or the board for determining the
 27 rights of the parties, whether or not ~~such~~ the regulations conform to common law or statutory rules of
 28 evidence and other technical rules or procedure.

29 (2) A hearing or appeal may be conducted by telephone or by videoconference, WITH THE
 30 CONSENT OF BOTH PARTIES."

1 HOUSE BILL NO. 100

2 INTRODUCED BY MCKEE

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT
6 INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING
7 OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN
8 AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO
9 THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR
10 CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND
11 LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER
12 COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING
13 LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL
14 RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY
15 TELEPHONE OR VIDEOCONFERENCE, ~~WITH THE CONSENT OF BOTH PARTIES; PROVIDING THAT THE~~
16 ~~REDUCTION IN BENEFITS REQUIREMENT DOES NOT APPLY TO A PENSION COVERED BY SECTION~~
17 ~~501(C)(9) OF THE INTERNAL REVENUE CODE~~; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203,
18 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104,
19 39-51-2203, 39-51-2307, 39-51-2403, 39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE
20 DATES AND, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2324 **Section 1.** Section 13-4-106, MCA, is amended to read:

25 **"13-4-106. Compensation of judges.** (1) Except as provided in subsection (2), election judges
26 ~~shall~~ must be paid at the prevailing federal minimum wage for the number of hours worked during an
27 election plus the number of hours spent at the instruction session. Mileage may be paid to election judges
28 for attending instruction sessions. ~~Election judges are exempt from unemployment insurance coverage for~~
29 ~~services performed pursuant to this chapter.~~

30 (2) The chief election judge may be paid at a rate higher than the other election judges and may

1 be reimbursed for the actual expenses of transporting election materials.

2 (3) The election administrator shall certify the amount due each election judge to the county
3 governing body as soon after an election as all records necessary for ~~such~~ the certification are received."

4

5 **Section 2.** Section 39-51-201, MCA, is amended to read:

6 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
7 otherwise, the following definitions apply:

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

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

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

21 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
22 with the first day of the calendar week in which ~~such~~ the individual files a valid claim for benefits, except
23 that the benefit year ~~shall be~~ is 53 weeks if filing a new valid claim would result in overlapping any quarter
24 of the base year of a previously filed new claim. A subsequent benefit year may not be established until
25 the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the
26 arrangement approved by the secretary of labor of the United States, the base period is the period
27 applicable under the unemployment law of the paying state.

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

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

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

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

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

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

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

25 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
26 for which an individual has been convicted in a criminal court or has admitted or conduct ~~which that~~
27 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
28 or the employer.

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

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

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

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

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

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

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

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

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

16 (b) Notwithstanding ~~any of the foregoing provisions of this subsection (15)(a)~~, all ~~colleges and~~
17 universities in this state are institutions of higher education for purposes of this part.

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

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

22 (18) "Unemployment insurance administration fund" means the unemployment insurance
23 administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~
24 must be paid.

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

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

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

4 (A) retirement;

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

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

7 (D) death;

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

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

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

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

15
 16 **Section 3.** Section 39-51-203, MCA, is amended to read:

17 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
 18 means service by an individual, by a manager or member of a manager-managed limited liability company
 19 that has filed with the secretary of state, or by an officer of a corporation, including service in interstate
 20 commerce, performed for wages or under any contract of hire, written or oral, express or implied.

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

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

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

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

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

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

30 (i) the service is performed entirely within ~~such~~ the state; or

1 (ii) the service is performed both within and ~~without such~~ outside the state, but the service
 2 performed ~~without such~~ outside the state is incidental to the individual's service within the state;
 3 example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

4 (3) Service not covered under subsection (2) ~~of this section~~ and performed entirely ~~without this~~
 5 outside the state ~~with respect to no part of and on~~ which contributions are neither required ~~and~~ nor paid
 6 under an unemployment insurance law of any other state or of the federal government is considered to be
 7 employment subject to this chapter if the individual performing ~~such the~~ the services is a resident of this state
 8 and the department approves the election of the employing unit for whom ~~such the~~ the services are performed
 9 in order that the entire service of ~~such the~~ the individual is considered to be employment subject to this
 10 chapter.

11 (4) Service performed by an individual for wages is considered to be employment subject to this
 12 chapter ~~unless and~~ until it is shown to the satisfaction of the department that the individual is an
 13 independent contractor.

14 (5) The term "employment" includes service performed by an individual in the employ of this state
 15 or any of its instrumentalities (or in the employ of this state and one or more other states or their
 16 instrumentalities) for a hospital or institution of higher education located in this state. The term
 17 "employment" includes service performed by all individuals, including ~~without limitations~~ those individuals
 18 who work for the state of Montana, its universities, ~~any of its colleges,~~ public schools, components or units
 19 ~~thereof~~ of universities or public schools, or any local government unit and one or more other states or their
 20 instrumentalities or political subdivisions whose services are compensated by salary or wages.

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

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

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

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

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

30 (B) the employer is a corporation ~~which that~~ that is organized under the laws of this state; or

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

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

6 (b) An "American employer", for purposes of this subsection (7), means a person who is:

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

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

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

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

11
12 **Section 4.** Section 39-51-204, MCA, is amended to read:

13 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
14 include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) service performed in the employ of a school, ~~college,~~ or university if the service is performed
28 by a student who is enrolled and is regularly attending classes at a school, ~~college,~~ or university or by the
29 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
30 service, that the employment of the spouse to perform the service is provided under a program to provide

1 financial assistance to the student by the school, ~~college,~~ or university and that the employment will not
2 be covered by any program of unemployment insurance;

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

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

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

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

16 (ii) who contracts with a cosmetology salon as defined in 37-31-101 or a barbershop as defined
17 in 37-30-101, which contract must show that the cosmetologist or barber:

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

19 (B) receives payment for services from individual clientele; and

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

22 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination
23 (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack
24 of freedom from control or direction under this subsection);

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

29 (n) employment of sole proprietors ~~or,~~ working members of a partnership, or members of a
30 member-managed limited liability company that has filed with the secretary of state;

- 1 (o) services performed for the installation of floor coverings if the installer:
- 2 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 3 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 4 (iii) may perform services for anyone without limitation;
- 5 (iv) may accept or reject any job;
- 6 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 7 (vi) works under a written contract that:
- 8 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 9 contract obligations;
- 10 (B) states that the installer is not covered by unemployment insurance; and
- 11 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 12 exemption from workers' compensation requirements.
- 13 (2) "Employment" does not include elected public officials.
- 14 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 15 (a) in the employ of a church or convention or association of churches or an organization that is
- 16 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 17 supported by a church or convention or association of churches;
- 18 (b) by ~~a duty~~ an ordained, commissioned, or licensed minister of a church in the exercise of the
- 19 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 20 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 21 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 22 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
- 23 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
- 24 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
- 25 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
- 26 receiving work relief or work training; or
- 27 (e) for a state prison or other state correctional or custodial institution by an inmate of that
- 28 institution.
- 29 (4) An individual found to be an independent contractor by the department under the terms of
- 30 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent

1 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
2 39-51-2402.

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

6

7 **Section 5.** Section 39-51-603, MCA, is amended to read:

8 **"39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep
9 true and accurate work records containing ~~such the~~ information ~~as that~~ the department may prescribe.
10 Those records ~~shall~~ must be open to inspection and audit and ~~shall be subject to being~~ may be copied by
11 the department or its authorized representative at any reasonable time and as often as may be necessary.
12 An employing unit that maintains its records outside Montana shall furnish a copy of those records to the
13 department at the employing unit's expense or shall pay the department for the costs associated with
14 conducting the audit outside Montana.

15 (2) The department and the ~~chairman~~ presiding officer of any appeal tribunal may require from any
16 employing unit any sworn or unsworn reports with respect to persons employed by it ~~which that~~ the
17 department considers necessary ~~to for~~ the effective administration of this chapter.

18 (3) Information ~~thus obtained or~~ obtained from any individual under this chapter ~~shall~~ must, except
19 to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential
20 and ~~shall~~ may not be published or be open to public inspection, except to public employees in the
21 performance of their public duties, in any manner revealing the individual's or employing unit's identity, but
22 any claimant or ~~his~~ the claimant's legal representative at a hearing before the board or appeal tribunal ~~shall~~
23 must be supplied with information from the records to the extent necessary for the proper presentation of
24 ~~his~~ the claim.

25 (4) Any employee or member of the department who violates any provision of this section shall
26 be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both."

27

28 **Section 6.** Section 39-51-1105, MCA, is amended to read:

29 **"39-51-1105. Liability of corporate officers, managers, or members of limited liability company for**
30 **taxes, penalties, and interest owed by corporation or company. (1) When a corporation subject to**

1 Montana corporate law or a limited liability company ~~has failed~~ fails to file the annual corporation or
 2 company report with the Montana secretary of state as required by law, the department shall hold the
 3 president, ~~vice president~~ vice president, secretary, and treasurer or the managers of a manager-managed
 4 limited liability company jointly and severally liable for any taxes, penalties, and interest due for the period
 5 in which the corporation or company is delinquent in filing the annual corporation or company report. If
 6 the required annual corporation or company report is made and filed after the time specified, ~~such the~~
 7 officers or managers may not, on account of prior failure to make report, be held liable for the taxes,
 8 penalties, and interest ~~thereafter~~ accruing after making the report.

9 (2) For determining liability for taxes, penalties, and interest owed, a member-managed limited
 10 liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed
 11 extending to each member."

12
 13 **Section 7.** Section 39-51-1109, MCA, is amended to read:

14 **"39-51-1109. Tax appeals -- procedure.** A decision, determination, or redetermination of the
 15 department involving contribution liability, contribution rate, application for refund, employment status, or
 16 the charging of benefit payments to employers making payment in lieu of contributions is final unless an
 17 interested party entitled to ~~notice thereof~~ applies for an appeal to an appeals referee notification submits
 18 a written appeal of the decision, determination, or redetermination. The appeal must be made in the same
 19 manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment
 20 insurance benefits. Statutory rules of evidence and civil procedure do not apply to ~~hearings in a hearing~~
 21 on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the
 22 appeals referee and any subsequent appeal ~~therefrom~~ must be made in the same manner as prescribed in
 23 39-51-2403 through 39-51-2410."

24
 25 **Section 8.** Section 39-51-1301, MCA, is amended to read:

26 **"39-51-1301. Penalty and interest on past-due taxes.** (1) Taxes unpaid on the date on which they
 27 are due and payable, as provided by ~~subsections (1) and (2) of 39-51-1103 (1) and (2) and 39-51-1125,~~
 28 that are paid by the end of the month following the due date ~~shall be~~ are subject to a penalty assessment
 29 of \$10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month
 30 following the due date, the employer ~~shall be~~ is subject to a penalty assessment of \$15 or 15% of the taxes

1 due, whichever is greater. All past-due taxes ~~shall~~ bear interest at the rate of 18% a year, to be prorated
2 on a daily basis.

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

6 (3) There is an account in the federal special revenue fund. Penalties and interest collected under
7 this section must be deposited in that account. Money deposited in that account and appropriated to the
8 department may only be used by the department to administer this chapter, ~~to fund apprenticeship~~
9 ~~instruction programs pursuant to 39-6-103, and to detect~~ including the detection and collect collection of
10 unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts
11 appropriated for this purpose. Money in the account not appropriated for these purposes must be
12 transferred by the department to the unemployment insurance trust fund at the end of each ~~biennium~~ fiscal
13 year.

14 (4) When failure to pay taxes on time was not caused by willful intent of the employer, the
15 department may abate the penalty and interest.

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

19

20 **Section 9.** Section 39-51-1303, MCA, is amended to read:

21 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
22 liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105
23 defaults in any payment of taxes, penalties, or interest ~~thereon~~, the department may ~~at its discretion~~ initiate
24 a civil action in the name of the ~~Montana~~ department of labor and industry to collect the amount due, and
25 the employer, liable corporate officer, or liable member or manager of a limited liability company referred
26 to in 39-51-1105 adjudged in default shall pay the costs of ~~such~~ the action.

27 (2) An action for the collection of taxes due must be brought within 5 years after the due date of
28 ~~such~~ the taxes or it is barred.

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

1 **Section 10.** Section 39-51-1304, MCA, is amended to read:

2 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
3 penalties and interest assessed ~~thereon~~ on unpaid taxes, have the effect of a judgment against the
4 employer, liable corporate officer, or liable member or manager of a limited liability company referred to in
5 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a certificate
6 ~~setting forth~~ stating the amount of payments due and directing the clerk of the district court of any county
7 of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that
8 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the
9 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce
10 the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at
11 any time within 10 years of the creation of the lien.

12 (2) The lien provided for in subsection (1) is not valid against any third party owning an interest
13 in real or personal property against which the judgment is enforced if:

14 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

15 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
16 that all taxes, penalties, and interest due from the grantor have been paid.

17 (3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
18 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
19 against the employer, liable corporate officer, or liable member or manager of a limited liability company
20 referred to in 39-51-1105 under ~~this section or~~ 39-51-1303 or this section, or both, to collect the
21 delinquent taxes, penalties, and interest.

22 (4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
23 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
24 upon partial payment or whenever the department determines that the release or partial release of the lien
25 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
26 it determines that the lien is unenforceable."

27

28 **Section 11.** Section 39-51-2104, MCA, is amended to read:

29 **"39-51-2104. General benefit eligibility conditions.** (1) An unemployed individual is eligible to
30 receive benefits for any week of total unemployment within the individual's benefit year only if the

1 department finds that the individual:

2 ~~(1)(a)~~ has filed a claim at and has continued to report at an employment office in accordance with
3 rules ~~as that~~ the department may prescribe, except that the department may by rule prescribe that in cases
4 in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an
5 unemployed individual may file a claim and report for work by mail or through other governmental agencies;

6 ~~(2)(b)~~ is able to work, is available for work, and is seeking work. A claimant is not considered
7 ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the
8 failure is ~~due to~~ because of:

9 ~~(a)(i)~~ an illness or disability that occurs after the claimant has registered for work and suitable work
10 has not been offered to the claimant after the beginning of the illness or disability; or

11 ~~(b)(ii)~~ enrollment as a student as provided in 39-51-2307.

12 ~~(3)(c)~~ prior to the first week for which the individual is paid benefits, has been totally unemployed
13 for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes
14 of this subsection:

15 ~~(a)(i)~~ if benefits have been paid for that week;

16 ~~(b)(ii)~~ unless the individual was eligible for benefits during the week;

17 ~~(c)(iii)~~ unless it occurs within the benefit year of the claimant;

18 ~~(d)(iv)~~ unless it occurs after benefits first could become payable to any individual under this chapter.

19 (2) (a) The department shall establish a profiling system to identify individuals who are likely to
20 exhaust their regular benefits and who are in need of reemployment services.

21 (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to
22 subsection (2)(a) may be required to participate in reemployment services in order to be eligible for
23 unemployment benefits.

24 (c) The requirement for participation in reemployment services may be waived if the department
25 determines that:

26 (i) the individual has completed reemployment services; or

27 (ii) the individual's failure to participate in reemployment services is justifiable."

28

29 **Section 12.** Section 39-51-2203, MCA, is amended to read:

30 **"39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1)**

1 An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the
 2 individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other
 3 similar periodic payment that is based on the previous work of the individual and that is reasonably
 4 attributable to the week if:

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

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

11 (2) The reduction required by subsection (1) does not apply in those instances in which the
 12 governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a
 13 fund to which the individual was required to make a direct contribution. ~~A pension plan negotiated under
 14 a collective bargaining agreement is considered a direct employee contribution under this section.~~

15 ~~(3) THE REDUCTION REQUIRED BY SUBSECTION (1) DOES NOT APPLY TO A PENSION COVERED~~
 16 ~~BY SECTION 501(C)(9) OF THE INTERNAL REVENUE CODE."~~

17

18 **Section 13.** Section 39-51-2307, MCA, is amended to read:

19 "**39-51-2307. Disqualification because of student status.** (1) Except as provided in subsection
 20 (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and
 21 spring seasons of the year) or the vacation periods within the school year or during any prescribed school
 22 term if the individual is a student regularly attending an established educational institution.

23 (2) An individual attending an adult basic education class 20 hours a week or less while laid off
 24 from a job is not disqualified from receiving benefits if the individual is willing to return to work when
 25 notified.

26 (3) An otherwise eligible individual may not be denied benefits for any week because the individual
 27 is in training approved by the department, nor may the individual be denied benefits with respect to any
 28 week in which the individual is in training approved by the department by reason of the application of
 29 provisions in 39-51-2304 or the application of provisions in 39-51-2104(2)(1)(b)."

30

1 **Section 14.** Section 39-51-2403, MCA, is amended to read:

2 "**39-51-2403. Decision Hearing -- decision of appeals referee.** Upon appeal of a determination or
 3 redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by
 4 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. After a ~~the~~ hearing, ~~an~~ the
 5 appeals referee shall promptly make findings and conclusions ~~promptly~~ and ~~on the basis thereof~~ affirm,
 6 modify, or reverse the deputy's determination or redetermination. Each interested party ~~shall~~ must be
 7 promptly furnished ~~promptly~~ a copy of the decision and the supporting findings and conclusions. This
 8 decision ~~shall be~~ is final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~such~~
 9 notification was mailed to the interested party's last-known address, ~~provided that such.~~ The 10-day period
 10 may be extended for good cause."

11

12 **Section 15.** Section 39-51-2404, MCA, is amended to read:

13 "**39-51-2404. Appeal to board procedure.** ~~Any~~ An interested party who is dissatisfied with a
 14 decision of an appeals referee ~~is entitled to~~ may appeal to the board. The department ~~will~~ shall promptly
 15 transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by
 16 telephone or by videoconference, WITH THE CONSENT OF BOTH PARTIES. When a decision is rendered
 17 by the board ~~with~~ and copies of ~~such~~ the decision are mailed to all interested parties, including the
 18 department, that decision ~~shall become~~ is final unless an interested party requests a rehearing or initiates
 19 judicial review by filing a petition in district court within 30 days of the date of mailing of the board's
 20 decision to ~~his~~ the party's last-known address."

21

22 **Section 16.** Section 39-51-2407, MCA, is amended to read:

23 "**39-51-2407. Procedure for disputed claims to be prescribed by regulation -- conduct of hearing**
 24 **or appeal.** (1) The manner in which disputed claims ~~shall~~ must be presented, the reports ~~thereon~~ on
 25 disputed claims required from the claimant and from employers, and the conduct of hearings and appeals
 26 ~~shall~~ must be in accordance with regulations prescribed by the department or the board for determining the
 27 rights of the parties, whether or not ~~such~~ the regulations conform to common law or statutory rules of
 28 evidence and other technical rules or procedure.

29 (2) A hearing or appeal may be conducted by telephone or by videoconference, WITH THE
 30 CONSENT OF BOTH PARTIES."

1 **NEW SECTION. Section 17. Access to governmental records.** Upon request by the department,
2 a state or local government agency, including the units of the university system, or a state or local
3 government official or employee shall cooperate by supplying the department with information that would
4 aid in the administration of this chapter. The department may use the information only for administration
5 of this chapter. Any confidential information provided to the department remains confidential and may not
6 be published or open to public inspection unless specifically required in the performance of the employee's
7 duties.

8
9 **NEW SECTION. Section 18. Codification instruction.** [Section 17] is intended to be codified as
10 an integral part of Title 39, chapter 51, part 5, and the provisions of Title 39, chapter 51, apply to [section
11 17].

12
13 **NEW SECTION. Section 19. Applicability.** [This act] applies to hearings or appeals requested on
14 or after [the effective date of sections ~~4~~ 2 through 10 and 12 through 19].

15
16 **NEW SECTION. Section 20. Effective dates.** (1) [SECTION 1] IS EFFECTIVE JANUARY 1, 1996.
17 (2) [Sections ~~4~~ 2 through 10 and 12 through 19, 21, and this section] are effective on passage
18 and approval.

19 ~~(2)(3)~~ [Section 11] is effective October 1, 1995.

20
21 **NEW SECTION. SECTION 21. CONTINGENT TERMINATION. IF 26 U.S.C. 3304 IS AMENDED TO**
22 **NO LONGER REQUIRE THAT ELECTION JUDGES RECEIVE UNEMPLOYMENT INSURANCE COVERAGE,**
23 **THEN [SECTION 1 OF THIS ACT] TERMINATES ON THE DATE ON WHICH THE U.S.C. AMENDMENT IS**
24 **EFFECTIVE.**

25

-END-