

*Paul Moran*

House BILL NO. 272

INTRODUCED BY

*Storall*

*Frankie*

*John*

*Mulligan*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-3-201, MCA, is amended to read:

"39-3-201. Definitions. The following are the definitions used for the purpose of this part:

- (1) "Board" means the board of personnel appeals provided for in 2-15-1705.
- (2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ the director, commissioner, or chief for the purpose of this part.
- (3) "Department" means the department of labor and industry as provided for in 2-15-1701.
- (4) "Employ" means to permit ~~or suffer~~ to work.
- (5) "Employee" includes any person who works for another for hire.
- (6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but ~~shall~~ does not include the United States.
- (7) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus, piecework, and all tips, and gratuities of any kind, or service charges covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.
- (b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool



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INTRODUCED BILL

1 agreement."

2

3 **Section 2.** Section 39-3-402, MCA, is amended to read:

4 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

5 (1) "Commissioner" means the commissioner of labor and industry.

6 (2) "Employ" means to ~~suffer or~~ permit to work.

7 (3) "Employee" means an individual employed by an employer.

8 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection  
9 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,  
10 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and  
11 wildlife.

12 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

13 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of  
14 industries or employment or class of employment in which employees are gainfully employed.

15 (7) (a) "Wage" means compensation due to an employee by reason of ~~his~~ employment, payable  
16 in legal tender of the United States or check on banks convertible into cash on demand at full face value,  
17 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term  
18 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other  
19 facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees; however,  
20 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the  
21 employee.

22 (b) The term "wage" does not include the cost to the employer of providing meals or a meal  
23 allowance to the employee or the value of any tips, gratuities, or service charges covered by section  
24 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received  
25 by employees for services rendered by them to patrons of premises licensed to provide food, beverage, or  
26 lodging received by an employee as a gratuity for service.

27 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added  
28 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
29 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool  
30 agreement."

1           **Section 3.** Section 15-30-111, MCA, is amended to read:

2           **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal  
3 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or~~ as that  
4 section may be labeled or amended and in addition ~~shall include~~ includes the following:

5           (a) interest received on obligations of another state or territory or county, municipality, district, or  
6 other political subdivision ~~thereof~~;

7           (b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in  
8 a reduction of Montana income tax liability;

9           (c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal  
10 Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation  
11 on the income; and

12           (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

13           (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
14 amended, adjusted gross income does not include the following which are exempt from taxation under this  
15 chapter:

16           (a) all interest income from obligations of the United States government, the state of Montana,  
17 county, municipality, district, or other political subdivision ~~thereof~~;

18           (b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800  
19 for a taxpayer filing a separate return and \$1,600 for each joint return;

20           (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
21 received as defined in 15-30-101;

22           (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

23           (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
24 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess  
25 of \$30,000 as shown on the taxpayer's return;

26           (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
27 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided  
28 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of  
29 \$30,000 as shown on their joint return;

30           (d) all Montana income tax refunds or tax refund credits;

1 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

2 (f) all tips, gratuities, or service charges covered by section 3402(k) of the Internal Revenue Code  
3 of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by  
4 them to patrons of premises licensed to provide food, beverage, or lodging;

5 (g) all benefits received under the workers' compensation laws;

6 (h) all health insurance premiums paid by an employer for an employee if attributed as income to  
7 the employee under federal law; and

8 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against  
9 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

10 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)  
11 shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as  
12 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election  
13 is effective.

14 (4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business  
15 deductions by an amount for wages and salaries for which a federal tax credit was elected under section  
16 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to  
17 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be  
18 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or  
19 small business corporation, the deduction must be made to determine the amount of income or loss of the  
20 partnership or small business corporation.

21 (5) Married taxpayers filing a joint federal return who ~~must~~ are required to include part of their  
22 social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income  
23 may split the federal base used in calculation of federal taxable social security benefits or federal taxable  
24 tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base  
25 must be split equally on the Montana return.

26 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of  
27 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross  
28 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the  
29 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and  
30 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the

1 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's  
2 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
3 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined  
4 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable  
5 to engage in any substantial gainful activity by reason of any medically determined physical or mental  
6 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of  
7 contingency--sec. 3, Ch. 634, L. 1983.)"

8  
9 **Section 4.** Section 15-30-201, MCA, is amended to read:

10 "15-30-201. **Definitions.** When used in 15-30-201 through 15-30-209, the following definitions  
11 apply:

12 (1) "Agricultural labor" includes all services performed on a farm or ranch in connection with  
13 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,  
14 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,  
15 and fur-bearing animals and wildlife.

16 (2) "Employee" includes an officer, employee, or elected public official of the United States, the  
17 state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or  
18 instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United  
19 States or Montana. The term "~~employee~~" also includes an officer of a corporation.

20 (3) "Employer" means the person for whom an individual performs or performed any service, of  
21 whatever nature, as an employee of the person; ~~except that if the person for whom the individual performs~~  
22 ~~or performed the service does not have control of the payment of the wages for the service, the term~~  
23 "~~employer~~" means the person having control of the payment of wages.

24 (4) "Wages" means all remuneration (other than fees paid to a public official) for services  
25 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
26 medium other than cash, except that the term does not include remuneration paid:

27 (a) for active service as a member of the regular armed forces of the United States, as defined in  
28 10 U.S.C. 101(33);

29 (b) for agricultural labor as defined in subsection (1);

30 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity

1 or sorority;

2 (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
3 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
4 is performed by an individual who is regularly employed by the employer to perform the service. For  
5 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer  
6 during a calendar quarter only if:

7 (i) on each of 24 days during a quarter the individual performs service not in the course of the  
8 employer's trade or business for the employer for some portion of the day; and

9 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i)~~, by the  
10 employer in the performance of service during the preceding calendar quarter;

11 (e) for services by a citizen or resident of the United States for a foreign government or an  
12 international organization;

13 (f) for services performed by ~~a duly an~~ ordained, commissioned, or licensed minister of a church  
14 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties  
15 required by the order;

16 (g) (i) for services performed by an individual under ~~the age of 18~~ years of age in the delivery or  
17 distribution of newspapers or shopping news, not including delivery or distribution to any point for  
18 subsequent delivery or distribution; or

19 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines  
20 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by  
21 ~~him~~ the individual at a fixed price, ~~he~~ with compensation ~~being~~ based on the retention of the excess of the  
22 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether  
23 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to  
24 be credited with the unsold newspapers or magazines turned back;

25 (h) for services not in the course of the employer's trade or business to the extent paid in any  
26 medium other than cash when the payments are in the form of lodgings or meals and the services are  
27 received by the employee at the request of and for the convenience of the employer;

28 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or  
29 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization  
30 insurance for the employee or dependents, and employees' club activities;

1 (j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

2 (k) as tips, gratuities, or service charges in accordance with section 3402(k) of the Internal  
3 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services  
4 rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

5 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee  
6 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in  
7 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates  
8 on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

9

10 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

11

-END-

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0272, as introduced

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DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying certain labor laws and tax laws to include a service charge received by employees of the food, beverage, and lodging industry; and providing an immediate effective date.


FISCAL IMPACT:

There is no impact to Department of Revenue expenditures under the intent of the proposed legislation (see technical note below). Because the proposed legislation would exempt from taxation "service charges" which are currently taxable, a negative impact on Individual Income Tax revenue would occur. However, the data necessary to calculate the magnitude of the impact is not available.

TECHNICAL NOTE:

The present language in the proposed legislation would not allow the exemption. Service charges are not covered by section 3402(k) of IRC (as the proposed legislation states), they are covered by section 3401 of the IRC. IRC section 3402(k) discusses "tips" which are subsequently treated as a wage for withholding purposes. Service charges (as defined by the proposed legislation) are not considered tips, but are wages under 3401 IRC. These IRC references would need to be changed in the proposed legislation in order to exempt "service charges" from taxation.

Unemployment Insurance rules already require the reporting of service charges.

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

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JAY STOVALL, PRIMARY SPONSOR    DATE  
Fiscal Note for HB0272, as introduced

HB 272



APPROVED BY COMMITTEE  
ON BUSINESS AND LABOR

HOUSE BILL NO. 272

INTRODUCED BY STOVALL, HURDLE, MOLNAR, BOHLINGER, SOFT, SIMON, FORRESTER, MILLS,  
STANG, GROSFIELD, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO  
INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING  
INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 39-3-201, MCA, is amended to read:

**"39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

(1) "Board" means the board of personnel appeals provided for in 2-15-1705.

(2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ the director, commissioner, or chief for the purpose of this part.

(3) "Department" means the department of labor and industry as provided for in 2-15-1701.

(4) "Employ" means to permit or suffer ~~OR SUFFER~~ to work.

(5) "Employee" includes any person who works for another for hire.

(6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but ~~shall~~ does not include the United States.

(7) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus, piecework, and all tips, and AND gratuities of any kind, or service charges THAT ARE covered by section 3402(k) AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
 2 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool  
 3 agreement."

4

5 **Section 2.** Section 39-3-402, MCA, is amended to read:

6 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

7 (1) "Commissioner" means the commissioner of labor and industry.

8 (2) "Employ" means to ~~suffer or~~ SUFFER OR permit to work.

9 (3) "Employee" means an individual employed by an employer.

10 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection  
 11 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,  
 12 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and  
 13 wildlife.

14 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

15 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of  
 16 industries or employment or class of employment in which employees are gainfully employed.

17 (7) (a) "Wage" means compensation due to an employee by reason of his employment, payable  
 18 in legal tender of the United States or check on banks convertible into cash on demand at full face value,  
 19 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term  
 20 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other  
 21 facility if the lodging or other facility is customarily furnished by the employer to his employees; however,  
 22 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the  
 23 employee.

24 (b) The term "wage" does not include the cost to the employer of providing meals or a meal  
 25 allowance to the employee or the value of any tips, OR gratuities, or service charges THAT ARE covered  
 26 by section 3402(k) OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal  
 27 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for  
 28 services rendered by them to patrons of premises licensed to provide food, beverage, or lodging received  
 29 by an employee as a gratuity for service.

30 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
2 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool  
3 agreement."

4  
5 **Section 3.** Section 15-30-111, MCA, is amended to read:

6 "15-30-111. **Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal  
7 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or~~ as that  
8 section may be labeled or amended and in addition ~~shall include~~ includes the following:

9 (a) interest received on obligations of another state or territory or county, municipality, district, or  
10 other political subdivision ~~thereof~~;

11 (b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in  
12 a reduction of Montana income tax liability;

13 (c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal  
14 Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation  
15 on the income; and

16 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

17 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
18 amended, adjusted gross income does not include the following which are exempt from taxation under this  
19 chapter:

20 (a) all interest income from obligations of the United States government, the state of Montana,  
21 county, municipality, district, or other political subdivision ~~thereof~~;

22 (b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800  
23 for a taxpayer filing a separate return and \$1,600 for each joint return;

24 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
25 received as defined in 15-30-101;

26 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

27 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
28 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess  
29 of \$30,000 as shown on the taxpayer's return;

30 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity

1 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided  
2 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of  
3 \$30,000 as shown on their joint return;

4 (d) all Montana income tax refunds or tax refund credits;

5 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

6 (f) all tips, gratuities, or service charges covered by section 3402(k) of the Internal Revenue Code  
7 of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by  
8 them to patrons of premises licensed to provide food, beverage, or lodging;

9 (g) all benefits received under the workers' compensation laws;

10 (h) all health insurance premiums paid by an employer for an employee if attributed as income to  
11 the employee under federal law; and

12 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against  
13 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

14 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)  
15 shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as  
16 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election  
17 is effective.

18 (4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business  
19 deductions by an amount for wages and salaries for which a federal tax credit was elected under section  
20 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to  
21 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be  
22 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or  
23 small business corporation, the deduction must be made to determine the amount of income or loss of the  
24 partnership or small business corporation.

25 (5) Married taxpayers filing a joint federal return who ~~must~~ are required to include part of their  
26 social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income  
27 may split the federal base used in calculation of federal taxable social security benefits or federal taxable  
28 tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base  
29 must be split equally on the Montana return.

30 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of

1 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross  
 2 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the  
 3 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and  
 4 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the  
 5 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's  
 6 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
 7 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined  
 8 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable  
 9 to engage in any substantial gainful activity by reason of any medically determined physical or mental  
 10 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of  
 11 contingency--sec. 3, Ch. 634, L. 1983.)"

12

13 **Section 4.** Section 15-30-201, MCA, is amended to read:

14 **"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions  
 15 apply:

16 (1) "Agricultural labor" includes all services performed on a farm or ranch in connection with  
 17 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,  
 18 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,  
 19 and fur-bearing animals and wildlife.

20 (2) "Employee" includes an officer, employee, or elected public official of the United States, the  
 21 state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or  
 22 instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United  
 23 States or Montana. The term "~~employee~~" also includes an officer of a corporation.

24 (3) "Employer" means the person for whom an individual performs or performed any service, of  
 25 whatever nature, as an employee of the person; ~~except~~ that if the person for whom the individual performs  
 26 or performed the service does not have control of the payment of the wages for the service, the term  
 27 "~~employer~~" means the person having control of the payment of wages.

28 (4) "Wages" means all remuneration (other than fees paid to a public official) for services  
 29 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
 30 medium other than cash, except that the term does not include remuneration paid:

- 1 (a) for active service as a member of the regular armed forces of the United States, as defined in  
 2 10 U.S.C. 101(33);
- 3 (b) for agricultural labor as defined in subsection (1);
- 4 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity  
 5 or sorority;
- 6 (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
 7 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
 8 is performed by an individual who is regularly employed by the employer to perform the service. For  
 9 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer  
 10 during a calendar quarter only if:
- 11 (i) on each of 24 days during a quarter the individual performs service not in the course of the  
 12 employer's trade or business for the employer for some portion of the day; and
- 13 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i),~~ by the  
 14 employer in the performance of service during the preceding calendar quarter;
- 15 (e) for services by a citizen or resident of the United States for a foreign government or an  
 16 international organization;
- 17 (f) for services performed by ~~a duly~~ an ordained, commissioned, or licensed minister of a church  
 18 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties  
 19 required by the order;
- 20 (g) (i) for services performed by an individual under ~~the age of 18~~ years of age in the delivery or  
 21 distribution of newspapers or shopping news, not including delivery or distribution to any point for  
 22 subsequent delivery or distribution; or
- 23 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines  
 24 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by  
 25 ~~him~~ the individual at a fixed price, ~~his~~ with compensation ~~being~~ based on the retention of the excess of the  
 26 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether  
 27 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to  
 28 be credited with the unsold newspapers or magazines turned back;
- 29 (h) for services not in the course of the employer's trade or business to the extent paid in any  
 30 medium other than cash when the payments are in the form of lodgings or meals and the services are

1 received by the employee at the request of and for the convenience of the employer;

2 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or  
3 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization  
4 insurance for the employee or dependents, and employees' club activities;

5 (j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

6 (k) as tips, gratuities, or service charges in accordance with section 3402(k) of the Internal  
7 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services  
8 rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

9 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee  
10 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in  
11 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates  
12 on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

13

14 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

15

-END-

## 1 HOUSE BILL NO. 272

2 INTRODUCED BY STOVALL, HURDLE, MOLNAR, BOHLINGER, SOFT, SIMON, FORRESTER, MILLS,  
3 STANG, GROSFIELD, ANDERSON  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO  
6 INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING  
7 INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND  
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
9

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

12 **Section 1.** Section 39-3-201, MCA, is amended to read:

13 **"39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

14 (1) "Board" means the board of personnel appeals provided for in 2-15-1705.

15 (2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of  
16 labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ the  
17 director, commissioner, or chief for the purpose of this part.

18 (3) "Department" means the department of labor and industry as provided for in 2-15-1701.

19 (4) "Employ" means to permit or suffer **OR SUFFER** to work.

20 (5) "Employee" includes any person who works for another for hire.

21 (6) "Employer" includes any individual, partnership, association, corporation, business trust, legal  
22 representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer  
23 in relation to an employee but ~~shall~~ does not include the United States.

24 (7) (a) "Wages" includes any money due an employee from the employer or employers, whether  
25 to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus,  
26 piecework, and all tips, and AND gratuities of any kind, or service charges THAT ARE covered by section  
27 3402(k) AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code  
28 of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by  
29 them to patrons of premises licensed to provide food, beverage, or lodging.

30 (b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added



1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
 2 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool  
 3 agreement."

4  
 5 **Section 2.** Section 39-3-402, MCA, is amended to read:

6 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

7 (1) "Commissioner" means the commissioner of labor and industry.

8 (2) "Employ" means to ~~suffer or~~ SUFFER OR permit to work.

9 (3) "Employee" means an individual employed by an employer.

10 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection  
 11 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,  
 12 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and  
 13 wildlife.

14 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

15 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of  
 16 industries or employment or class of employment in which employees are gainfully employed.

17 (7) (a) "Wage" means compensation due to an employee by reason of ~~his~~ employment, payable  
 18 in legal tender of the United States or check on banks convertible into cash on demand at full face value,  
 19 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term  
 20 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other  
 21 facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees; however,  
 22 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the  
 23 employee.

24 (b) The term "wage" does not include the cost to the employer of providing meals or a meal  
 25 allowance to the employee or the value of any tips, ~~OR gratuities, or service charges~~ THAT ARE covered  
 26 by section 3402(k) OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal  
 27 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for  
 28 services rendered by them to patrons of premises licensed to provide food, beverage, or lodging received  
 29 by an employee as a gratuity for service.

30 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
 2 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool  
 3 agreement."

4  
 5 **Section 3.** Section 15-30-111, MCA, is amended to read:

6 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal  
 7 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or~~ as that  
 8 section may be labeled or amended and in addition ~~shall include~~ includes the following:

9 (a) interest received on obligations of another state or territory or county, municipality, district, or  
 10 other political subdivision ~~thereof~~;

11 (b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in  
 12 a reduction of Montana income tax liability;

13 (c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal  
 14 Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation  
 15 on the income; and

16 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

17 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
 18 amended, adjusted gross income does not include the following which are exempt from taxation under this  
 19 chapter:

20 (a) all interest income from obligations of the United States government, the state of Montana,  
 21 county, municipality, district, or other political subdivision ~~thereof~~;

22 (b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800  
 23 for a taxpayer filing a separate return and \$1,600 for each joint return;

24 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
 25 received as defined in 15-30-101;

26 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

27 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
 28 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess  
 29 of \$30,000 as shown on the taxpayer's return;

30 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity

1 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided  
 2 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of  
 3 \$30,000 as shown on their joint return;

4 (d) all Montana income tax refunds or tax refund credits;

5 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

6 (f) all tips, ~~OR gratuities, or service charges~~ THAT ARE covered by section 3402(k) OR SERVICE  
 7 CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as amended  
 8 and applicable on January 1, 1983, received by persons for services rendered by them to patrons of  
 9 premises licensed to provide food, beverage, or lodging;

10 (g) all benefits received under the workers' compensation laws;

11 (h) all health insurance premiums paid by an employer for an employee if attributed as income to  
 12 the employee under federal law; and

13 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against  
 14 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

15 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)  
 16 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as  
 17 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election  
 18 is effective.

19 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business  
 20 deductions by an amount for wages and salaries for which a federal tax credit was elected under section  
 21 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to  
 22 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be  
 23 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or  
 24 small business corporation, the deduction must be made to determine the amount of income or loss of the  
 25 partnership or small business corporation.

26 (5) Married taxpayers filing a joint federal return who ~~must~~ are required to include part of their  
 27 social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income  
 28 may split the federal base used in calculation of federal taxable social security benefits or federal taxable  
 29 tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base  
 30 must be split equally on the Montana return.

1 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of  
2 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross  
3 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the  
4 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and  
5 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the  
6 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's  
7 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
8 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined  
9 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable  
10 to engage in any substantial gainful activity by reason of any medically determined physical or mental  
11 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of  
12 contingency--sec. 3, Ch. 634, L. 1983.)"

13  
14 **Section 4.** Section 15-30-201, MCA, is amended to read:  
15 **"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions  
16 apply:

17 (1) "Agricultural labor" includes all services performed on a farm or ranch in connection with  
18 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,  
19 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,  
20 and fur-bearing animals and wildlife.

21 (2) "Employee" includes an officer, employee, or elected public official of the United States, the  
22 state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or  
23 instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United  
24 States or Montana. The term "~~employee~~" also includes an officer of a corporation.

25 (3) "Employer" means the person for whom an individual performs or performed any service, of  
26 whatever nature, as an employee of the person, except that if the person for whom the individual performs  
27 or performed the service does not have control of the payment of the wages for the service, the term  
28 "~~employer~~" means the person having control of the payment of wages.

29 (4) "Wages" means all remuneration (other than fees paid to a public official) for services  
30 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any

- 1 medium other than cash, except that the term does not include remuneration paid:
- 2 (a) for active service as a member of the regular armed forces of the United States, as defined in  
3 10 U.S.C. 101(33);
- 4 (b) for agricultural labor as defined in subsection (1);
- 5 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity  
6 or sorority;
- 7 (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
8 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
9 is performed by an individual who is regularly employed by the employer to perform the service. For  
10 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer  
11 during a calendar quarter only if:
- 12 (i) on each of 24 days during a quarter the individual performs service not in the course of the  
13 employer's trade or business for the employer for some portion of the day; and
- 14 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i)~~, by the  
15 employer in the performance of service during the preceding calendar quarter;
- 16 (e) for services by a citizen or resident of the United States for a foreign government or an  
17 international organization;
- 18 (f) for services performed by ~~a~~ duly an ordained, commissioned, or licensed minister of a church  
19 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties  
20 required by the order;
- 21 (g) (i) for services performed by an individual under ~~the age of 18~~ years of age in the delivery or  
22 distribution of newspapers or shopping news, not including delivery or distribution to any point for  
23 subsequent delivery or distribution; or
- 24 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines  
25 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by  
26 ~~him~~ the individual at a fixed price, ~~his~~ with compensation ~~being~~ based on the retention of the excess of the  
27 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether  
28 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to  
29 be credited with the unsold newspapers or magazines turned back;
- 30 (h) for services not in the course of the employer's trade or business to the extent paid in any

1 medium other than cash when the payments are in the form of lodgings or meals and the services are  
2 received by the employee at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or  
4 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization  
5 insurance for the employee or dependents, and employees' club activities;

6 (j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

7 (k) as tips, ~~OR gratuities, or service charges~~ THAT ARE in accordance with section 3402(k) OR  
8 SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as  
9 amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons  
10 of premises licensed to provide food, beverage, or lodging;

11 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee  
12 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in  
13 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates  
14 on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

15  
16 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

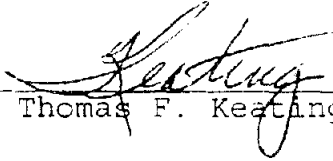
17 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 17, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 272 (third reading copy -- blue), respectfully report that HB 272 be amended as follows and as so amended be concurred in.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING AN EMPLOYER TO PROVIDE PROPER NOTICE TO A CUSTOMER REGARDING WHO RECEIVES SERVICE CHARGE;"

2. Title, line 8.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Page 2, lines 1 through 3.

Following: "bill" on line 1

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

4. Page 3, lines 1 through 3

Following: "bill" on line 1.

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service



Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

HB 272

SENATE

charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the [effective date of this act]."

-END-



①

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 24, 1995 3:38 pm

Mr. Chairman: I move to amend HB 272 (third reading copy -- blue).

ADOPT 28-20

REJECT

Signed: Grant Grosfield  
Senator Grosfield

That such amendments read:

AMEND SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS  
COMMITTEE REPORT DATED MARCH 17, 1995, AS FOLLOWS:

Strip: Amendments No. 1 through 5 in their entirety

AND THAT HOUSE BILL NO. 272, THIRD READING COPY, BE FURTHER  
AMENDED AS FOLLOWS:

- 1. Title, line 8.  
Following: "DATE"  
Insert: "AND AN APPLICABILITY DATE"
- 2. Page 1, line 29.  
Following: "premises"  
Insert: "or businesses"
- 3. Page 2, line 2.  
Strike: "either"  
Following: "to the"  
Insert: "nonmanagement"  
Following: "beverage or"  
Insert: "to any other employee involved in related services,"
- 4. Page 2, line 28.  
Following: "premises"  
Insert: "or businesses"
- 5. Page 3, line 2.  
Strike: "either"  
Following: "to the"  
Insert: "nonmanagement"  
Following: "beverage or"  
Insert: "to any other employee involved in related services,"
- 6. Page 7, line 16.  
Following: "date"  
Insert: "applicability"

RV Amd. Coord.

HB 272

SENATE

Following: "approval"

Insert: "and applies to contracts entered into on or after [the  
effective date of this act]"

-END-

## 1 HOUSE BILL NO. 272

2 INTRODUCED BY STOVALL, HURDLE, MOLNAR, BOHLINGER, SOFT, SIMON, FORRESTER, MILLS,  
3 STANG, GROSFIELD, ANDERSON

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO  
6 INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING  
7 INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND  
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

11  
12 **Section 1.** Section 39-3-201, MCA, is amended to read:

13 **"39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

14 (1) "Board" means the board of personnel appeals provided for in 2-15-1705.

15 (2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of  
16 labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ the  
17 director, commissioner, or chief, for the purpose of this part.

18 (3) "Department" means the department of labor and industry as provided for in 2-15-1701.

19 (4) "Employ" means to permit or suffer **OR SUFFER** to work.

20 (5) "Employee" includes any person who works for another for hire.

21 (6) "Employer" includes any individual, partnership, association, corporation, business trust, legal  
22 representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer  
23 in relation to an employee but ~~shall~~ does not include the United States.

24 (7) (a) "Wages" includes any money due an employee from the employer or employers, whether  
25 to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus,  
26 piecework, and all tips, and AND gratuities of any kind, or service charges THAT ARE covered by section  
27 3402(k) AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code  
28 of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by  
29 them to patrons of premises OR BUSINESSES licensed to provide food, beverage, or lodging.

30 (b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
 2 either directly to the NONMANAGEMENT employee preparing or serving the food or beverage or TO ANY  
 3 OTHER EMPLOYEE INVOLVED IN RELATED SERVICES, pursuant to a tip pool agreement."

4  
 5 **Section 2.** Section 39-3-402, MCA, is amended to read:

6 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

7 (1) "Commissioner" means the commissioner of labor and industry.

8 (2) "Employ" means to ~~suffer or~~ SUFFER OR permit to work.

9 (3) "Employee" means an individual employed by an employer.

10 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection  
 11 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,  
 12 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and  
 13 wildlife.

14 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

15 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of  
 16 industries or employment or class of employment in which employees are gainfully employed.

17 (7) (a) "Wage" means compensation due to an employee by reason of ~~his~~ employment, payable  
 18 in legal tender of the United States or check on banks convertible into cash on demand at full face value,  
 19 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term  
 20 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other  
 21 facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees; however,  
 22 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the  
 23 employee.

24 (b) The term "wage" does not include the cost to the employer of providing meals or a meal  
 25 allowance to the employee or the value of any tips, OR gratuities, or service charges THAT ARE covered  
 26 by section 3402(k) OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal  
 27 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for  
 28 services rendered by them to patrons of premises OR BUSINESSES licensed to provide food, beverage, or  
 29 lodging received by an employee as a gratuity for service.

30 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed  
 2 either directly to the NONMANAGEMENT employee preparing or serving the food or beverage or TO ANY  
 3 OTHER EMPLOYEE INVOLVED IN RELATED SERVICES, pursuant to a tip pool agreement."

4  
 5 **Section 3.** Section 15-30-111, MCA, is amended to read:

6 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal  
 7 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or as that~~  
 8 section may be labeled or amended and in addition ~~shall include~~ includes the following:

9 (a) interest received on obligations of another state or territory or county, municipality, district, or  
 10 other political subdivision ~~thereof~~;

11 (b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in  
 12 a reduction of Montana income tax liability;

13 (c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal  
 14 Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation  
 15 on the income; and

16 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

17 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
 18 amended, adjusted gross income does not include the following which are exempt from taxation under this  
 19 chapter:

20 (a) all interest income from obligations of the United States government, the state of Montana,  
 21 county, municipality, district, or other political subdivision ~~thereof~~;

22 (b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800  
 23 for a taxpayer filing a separate return and \$1,600 for each joint return;

24 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
 25 received as defined in 15-30-101;

26 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

27 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
 28 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess  
 29 of \$30,000 as shown on the taxpayer's return;

30 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity

1 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided  
 2 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of  
 3 \$30,000 as shown on their joint return;

4 (d) all Montana income tax refunds or tax refund credits;

5 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

6 (f) all tips, ~~OR gratuities, or service charges~~ THAT ARE covered by section 3402(k) OR SERVICE  
 7 CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as amended  
 8 and applicable on January 1, 1983, received by persons for services rendered by them to patrons of  
 9 premises licensed to provide food, beverage, or lodging;

10 (g) all benefits received under the workers' compensation laws;

11 (h) all health insurance premiums paid by an employer for an employee if attributed as income to  
 12 the employee under federal law; and

13 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against  
 14 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

15 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)  
 16 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as  
 17 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election  
 18 is effective.

19 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business  
 20 deductions by an amount for wages and salaries for which a federal tax credit was elected under section  
 21 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to  
 22 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be  
 23 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or  
 24 small business corporation, the deduction must be made to determine the amount of income or loss of the  
 25 partnership or small business corporation.

26 (5) Married taxpayers filing a joint federal return who ~~must~~ are required to include part of their  
 27 social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income  
 28 may split the federal base used in calculation of federal taxable social security benefits or federal taxable  
 29 tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base  
 30 must be split equally on the Montana return.

1           (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of  
 2 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross  
 3 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the  
 4 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and  
 5 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the  
 6 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's  
 7 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
 8 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined  
 9 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable  
 10 to engage in any substantial gainful activity by reason of any medically determined physical or mental  
 11 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of  
 12 contingency--sec. 3, Ch. 634, L. 1983.)"

13  
 14           **Section 4.** Section 15-30-201, MCA, is amended to read:

15           **"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions  
 16 apply:

17           (1) "Agricultural labor" includes all services performed on a farm or ranch in connection with  
 18 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,  
 19 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,  
 20 and fur-bearing animals and wildlife.

21           (2) "Employee" includes an officer, employee, or elected public official of the United States, the  
 22 state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or  
 23 instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United  
 24 States or Montana. The term "~~employee~~" also includes an officer of a corporation.

25           (3) "Employer" means the person for whom an individual performs or performed any service, of  
 26 whatever nature, as an employee of the person; except that if the person for whom the individual performs  
 27 or performed the service does not have control of the payment of the wages for the service, the term  
 28 "~~employer~~" means the person having control of the payment of wages.

29           (4) "Wages" means all remuneration (other than fees paid to a public official) for services  
 30 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any

1 medium other than cash, except that the term does not include remuneration paid:

2 (a) for active service as a member of the regular armed forces of the United States, as defined in  
3 10 U.S.C. 101(33);

4 (b) for agricultural labor as defined in subsection (1);

5 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity  
6 or sorority;

7 (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
8 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
9 is performed by an individual who is regularly employed by the employer to perform the service. For  
10 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer  
11 during a calendar quarter only if:

12 (i) on each of 24 days during a quarter the individual performs service not in the course of the  
13 employer's trade or business for the employer for some portion of the day; and

14 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i)~~, by the  
15 employer in the performance of service during the preceding calendar quarter;

16 (e) for services by a citizen or resident of the United States for a foreign government or an  
17 international organization;

18 (f) for services performed by ~~a~~ duly an ordained, commissioned, or licensed minister of a church  
19 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties  
20 required by the order;

21 (g) (i) for services performed by an individual under ~~the age of 18~~ years of age in the delivery or  
22 distribution of newspapers or shopping news, not including delivery or distribution to any point for  
23 subsequent delivery or distribution; or

24 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines  
25 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by  
26 ~~him~~ the individual at a fixed price, ~~he~~ with compensation ~~being~~ based on the retention of the excess of the  
27 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether  
28 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to  
29 be credited with the unsold newspapers or magazines turned back;

30 (h) for services not in the course of the employer's trade or business to the extent paid in any



1 medium other than cash when the payments are in the form of lodgings or meals and the services are  
2 received by the employee at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or  
4 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization  
5 insurance for the employee or dependents, and employees' club activities;

6 (j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

7 (k) as tips, ~~OR gratuities, or service charges~~ THAT ARE in accordance with section 3402(k) OR  
8 SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as  
9 amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons  
10 of premises licensed to provide food, beverage, or lodging;

11 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee  
12 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in  
13 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates  
14 on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

15

16 NEW SECTION. Section 5. Effective date -- APPLICABILITY. [This act] is effective on passage  
17 and approval AND APPLIES TO CONTRACTS ENTERED INTO ON OR AFTER [THE EFFECTIVE DATE OF  
18 THIS ACT].

19

-END-